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Robt. M. Elliott

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# BANK DEPOSITS

TRUST DEPOSITS

ALTERNATE DEPOSITS

JOINT DEPOSITS

A full statement of the general principles of law governing these forms of deposits. Digests of all cases involving such deposits which have been decided by the Courts of the different States. Complete text of the statutes regulating these deposits, which have been enacted in twenty-seven States

BY

JOHN EDSON BRADY  
of the New York Bar

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## **PREFACE.**

In recent years bank deposits in the trust, joint and alternate forms have become exceedingly popular, especially among depositors in banking institutions exercising savings bank functions.

Many different motives actuate the depositors in opening these accounts. The frequency with which disputes over accounts in the forms mentioned are brought into the courts bears testimony to the fact that in many cases the deposit fails to carry out the intention of the depositor. And instances are not wanting wherein these accounts have proved a source of trouble, and even of pecuniary loss, to the banks which accepted them. These facts were called to the attention of the author by Mr. Alfred F. White, President of the Banking Law Journal Company, and, acting upon his suggestion that there was a demand for a book setting forth the law with respect to trust, joint and alternate deposits, this work was undertaken.

The author wishes to acknowledge his obligation to Mr. Thomas B. Paton, General Counsel of the American Bankers' Association, who collected and caused to be published in the Banking Law Journal in the years 1900 and 1901 a number of decisions, which have been freely used herein.

With these observations this book is submitted to the legal and banking professions in the belief that they will find it useful, and in the hope that they will treat such imperfections as it may contain with leniency.

**JOHN EDSON BRADY.**

44 Pine Street, New York City.  
September 7, 1911.



## **EXPLANATORY.**

To the members of the bar no explanation is necessary. But, as this book is intended for the guidance of the layman and will come to the hands of many outside of the legal profession, a word by way of elucidation is perhaps pardonable.

Those portions of the book designated Part I and Part II are intended to be a general outline of the law governing the creation and disposition of trust accounts and accounts in two names. In the foot notes are cited the decisions which support the propositions of law set forth. A digest of each of these decisions is to be found in Appendix A, wherein it has been endeavored to collect all cases, which have been decided down to the present time, affecting the classes of bank deposits of which this book treats. The digests are grouped according to states and are arranged in alphabetical order.

The index covers Part I, Part II and Appendix A. The table of cases, which follows Appendix B indicates on what pages each case is referred to throughout the book. In Appendix B are gathered the statutes relating to trust, joint and alternate deposits, which the legislatures of twenty seven states have enacted, including all statutes which have been enacted to date.

J. E. B.

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## PART I.

### TRUST DEPOSITS.

§ 1. **Trust deposits.**—The term “trust deposit,” as used in the following pages has reference to deposits in the name of one person, as trustee for another. Many banks, especially savings banks, carry a large number of such accounts. The money generally belongs to the depositor and the cases disclose that the motives which actuate him in depositing his money in a trust account are various. Sometimes it is done as a matter of convenience in drawing the money. In many instances the deposit is made in this form because he has already deposited in his individual name the limit allowed by statute, or by the rules of the bank, and wishes to increase his deposit. In a certain percentage of cases the intent of the depositor is just what the form of the deposit implies, and he wishes to create a trust of the fund in favor of the person whom he designates as beneficiary, or the *cestui que trust*, as the beneficiary is legally termed. The difficulty, which confronts the courts in fixing the rights of the parties, lies in determining the intent of the depositor. The question usually arises after the depositor's death and his intention can be determined only from the circumstances surrounding the transaction. And his intention is all important for upon it depends the question of whether or not a valid trust was created. It is

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fully as necessary to the creation of a valid trust that the depositor intended to create a trust as it is for him to take the necessary steps to accomplish that result.

Undoubtedly depositors of trust accounts very frequently adopt this method of disposing of their estate after their death. They wish to thereby avoid the making of a will or the appointing of an administrator to settle their estate, and this the law does not permit, as is pointed out in the subsequent sections.

In the pages which follow it is attempted to set forth and explain the rules which the courts have formulated regulating trust deposits. It will be found that decisions are not in entire harmony. Not only are the decisions of the different jurisdictions at variance, but there are also instances of conflict between decisions arising in the same jurisdiction.

**§ 2. Mere deposit by one person in trust for another does not establish an irrevocable trust.**—The mere fact that a person has deposited his money in a bank in his own name, in trust for another person, does not in itself establish an irrevocable trust in favor of the person named as beneficiary. In other words a deposit in the form of a trust is not conclusive evidence of an intention to create a trust.<sup>1</sup>

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1. *Jewett v. Shattuck*, (1878), 124 Mass. 590; *Williams v. Brooklyn Savings Bank*, (1900), 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021; *Miller v. Seaman's Bank for Savings*, (1901), 33 Misc. Rep. (N. Y.) 708, 68 N. Y. Supp. 983; *Rush v. South Brooklyn Savings Institution*, (1909), 65 Misc. Rep. (N. Y.), 66, 119 N. Y. Supp. 726; *Weber v. Bank for Savings*, N. Y. 1878, City Ct. Rep. 70; *People's Savings Bank v. Webb*, (1899), 21 R. I. 218, 42 Atl. Rep. 874.

## TRUST DEPOSITS

The rule that a mere deposit by one person in his name in trust for another does not, standing alone, create an irrevocable trust has long been settled. In the recent case of *Matter of Totten*,<sup>2</sup> decided by the New York Court of Appeals, it was said: "A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary."

In some of the earlier cases it was held that such a deposit created merely a presumption that a trust was intended, but the *Totten* case was the first in which a deposit of this kind was referred to as a tentative trust.

The reason why a deposit by one person in trust for another creates nothing more than a presumption of trust is that the deposit is open to many other explanations than an intent on the part of the depositor to establish a trust. A deposit in this form may or may not resolve itself into a trust. The deposit is but evidence (not conclusive) of an intent to establish a trust, to be considered in connection with the other facts and circumstances involved. Divers motives, other than a desire to make a gift in trust, may dictate the making of the deposit.

In *Matter of Barefield*,<sup>3</sup> where it appeared that a

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2. 179 N. Y. 112; 71 N. E. Rep. 748, (1904).

3. 36 Misc. Rep. (N. Y. ) 745, 74 N. Y. Supp. 472; *Aff'd*. 177 N. Y. 387, 69 N. E. Rep. 732.



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daughter had deposited money in trust for her mother in an account entitled "Rebecca A. R. Barefield in trust for Mary E. Rosell," it was said: "With the exception of the manner of opening the account the case is barren of any proof showing any intent to vest title in the decedent. This method of opening an account is one that is frequently followed by persons for various reasons of their own, and the courts are perfectly familiar with the fact that it is done repeatedly without any intention of the depositor divesting himself of ownership in the money."

In another New York case,<sup>4</sup> which, while it did not involve a trust deposit, has been referred to by the courts in passing upon such deposits, it was said: "We cannot close our eyes to the well known practice of persons depositing in savings banks, money to the credit of real or fictitious persons, with no intention of divesting themselves of ownership. It is attributable to various reasons; reasons connected with taxation; rules of the bank limiting the amount which any one individual may keep on deposit; the desire to obtain high rates of interest where there is a discrimination based on the amount of deposits, and the desire on the part of many persons to veil or conceal from others knowledge of their pecuniary condition."

In the case of *Mabie v. Bailey*,<sup>5</sup> it was said: "I should incline to the opinion that the character of such a transaction, as creating a trust, is not conclusively established by the mere fact of the deposit, so as to preclude evidence

4. *Beaver v. Beaver*, (1889), 117 N. Y. 430, 22 N. E. Rep. 940.

5. 95 N. Y. 206, (1884).

## TRUST DEPOSITS

of contemporaneous facts and circumstances constituting *res gestæ*, to show that the real motive of the depositor was not to create a trust, but to accomplish some independent and different purpose inconsistent with an intention to divest himself of the beneficial ownership in the fund."

In one of the earlier New York cases,<sup>6</sup> it was held that a deposit by one person in trust for another created a trust which could not be refuted by subsequent acts or declarations. The depositor placed a sum of money in a savings bank, in her own name, in trust for her brother. It was held that the form of the deposit raised a presumption of trust. This presumption might be refuted by facts or circumstances contemporaneous with the deposit. But, in the absence of such facts, the presumption became conclusive. It could not be refuted by acts or words subsequent to the deposit. What the depositor said and did after the deposit was made could not affect the original transaction.

In *People's Savings Bank v. Webb*,<sup>7</sup> it was said: "There is a unanimous agreement (in the decisions) that the creation of a trust as to a deposit is a question of intention, and so a question of fact. None of them hold that a trust is conclusively constituted by the deposit itself. Some go so far as to hold that a deposit in the name of another, without any mention of a trust, is still open to inquiry. The strictest rule in favor of the trust seems to be this: That the intention to create one may

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6. *Hyde v. Kitchen*, (1893), 69 Hun (N. Y.) 280, 23 N. Y. Supp. 573.

7. 21 R. I. 218. 42 Atl. Rep. 874 (1899).

## BANK DEPOSITS

be presumed where the depositor dies, leaving the matter unexplained and the apparent intention undisputed. It is certainly clear that the depositor is not conclusively bound by the mere form of a deposit as trustee for another. The proposition rests upon the good reason that one, who is dealing with his own property, either ignorantly or for convenience, or pursuant to a purpose, not fully determined or executed, should not be held to have dispossessed himself against his will."

§ 3. **Intent of depositor governs.**—The determination of the question of whether a valid trust of a bank account has been created is referable to the intent of the depositor. If, in making the deposit, he intended to create a trust, and such intent can be established, and, in addition to such intention has taken the requisite steps to create a trust, the courts will dispose of the fund in accordance with such intention. On the other hand, although the money is deposited in the form of a trust account, if it is shown that the depositor never intended to create a trust in favor of the party named as beneficiary, it will be held that no trust was created.<sup>8</sup>

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8. *Williams v. Brooklyn Savings Bank*, (1900), 51 N. Y. App. Div. 332; 64 N. Y. Supp. 1021; *Matter of Biggars*, (1902), 39 Misc. Rep. (N. Y.) 426, 80 N. Y. Supp. 214; *Green v. Sutherland*, (1903) 40 Misc. Rep. (N. Y.) 559, 82 N. Y. Supp. 878; *Matter of Barefield*, (1904), 177 N. Y. 387; 69 N. E. Rep. 732; *Matter of Smith*, (1903), 40 Misc. Rep. (N. Y.) 331, 81 N. Y. Supp. 1035; *Sayre v. Weil*, (1901), 94 Ala. 466, 10 So. Rep. 546; *Cleveland v. Hampden Savings Bank*, (1902), 182 Mass. 110, 65 N. E. Rep. 27; *Rambo v. Pile*, (1908), 220 Pa. 235; 69 Atl. Rep. 807; *Haux v. Dry Dock Savings Institution* (1897), 2 N. Y. App. Div. 165, *Aff'd.*, 154 N. Y. 736; *Decker v. Union Dime Savings Institution*, (1897), 15 N. Y. App. Div. 553; *Devlin v. Hinman*, (1898), 34 N. Y. App. Div. 107;

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*Green v. Sutherland*,<sup>9</sup> decided in 1903, was a case wherein it clearly appeared that there was no intention to create a trust. The depositor, an aged woman, confined to her home by injuries, desired to draw money which was on deposit in a savings bank, in her name. At her request a representative of the bank called and it was arranged between him and a daughter of the depositor that the account should be changed to read "Maria Wildbret, in trust for Sophie Sutherland, daughter." The arrangement was made for convenience in drawing the money. In an action brought after the depositor's death by her executor, to have the deposit declared the property of the depositor's estate, it was determined that the money belonged to the estate, and not to the daughter, the ground being that it appeared that there was no intention on the part of the depositor to establish a beneficial interest in favor of the daughter.

In another instance, which arose in the state of Pennsylvania,<sup>10</sup> it appeared that a real estate dealer opened an account in his own name, as "Trustee for E. S. Githens." He retained the pass book and continued to deposit his funds in the account. All the checks, which he drew in the course of his business, were drawn against this account. The depositor subsequently married the beneficiary of the deposit. The depositor survived the

*Brabrook v. Boston Five Cent Savings Bank*, 104 Mass. 228; *Cleveland v. Hampden Savings Bank*, (1902), 182 Mass. 110, 65 N. E. Rep. 27; *Estate of Thomas Smith*, (1891), 144 Pa. St. 428, 22 Atl. Rep. 916; *People's Savings Bank v. Webb*, (1899), 21 R. I. 218, 42 Atl. Rep. 874.

9. 40 Misc. Rep. (N. Y.) 559, 82 N. Y. Supp. 878 (1903).

10. *Rambo v. Pile*, (1908), 220 Pa. 235; 69 Atl. Rep. 807.

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beneficiary and, after his death, a controversy arose as to whether the fund belonged to his estate, or to the estate of the beneficiary. It was held that the circumstances under which the account was opened and maintained tended to show that the depositor intended to retain control and ownership of the deposit and that the money belonged to his estate.

In some instances the question of ownership has arisen before the death of the depositor, and the ownership is established by the positive testimony of the depositor.<sup>11</sup>

But even the positive testimony of the depositor that he intended to create a trust will not conclusively show that a trust has been created, where it clearly appears that the deposit was made in the form of a trust for some other purpose. In a New York case it appeared that one Louis H. Lattan opened four trust accounts, in which he named his two sisters as trustees, and one of his four children in each case as beneficiary. After the death of the trustees the children brought suit against their administrators to recover the deposits. Mr. Lattan testified that, in making the deposits, he intended to create irrevocable trusts. "But, it must not be forgotten," said the Court, "that he was testifying in behalf of his children's effort to obtain from his sisters' estates the

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11. *Matter of Barefield*, (1904), 177 N. Y. 387, 69 N. E. Rep. 732; *Matter of Smith*, (1903), 40 Misc. Rep. (N. Y.) 331, 81 N. Y. Supp. 1035; *Cunningham v. Davenport*, (1895), 147 N. Y. 43, 41 N. E. Rep. 412; *People's Savings Bank v. Webb*, (1899) 21 R. I. 218, 42 Atl. Rep. 874; *Sayre v. Weil*, (1891), 94 Ala. 466; 10 So. Rep. 546, in which case a depositor of funds in trust for his grandchildren testified as follows: "I put it there as a gift to them every week so that when they grew up they would have something to fall back on." It was held that a valid trust had been created.

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money which, for a period of sixteen years, had been treated as his own, and paid to him for the support of himself, his wife, and, presumably, these plaintiffs." It appeared that Mr. Lattan was not of a saving nature and that the trust accounts were opened for the purpose of putting the money beyond the peril of his spendthrift habits. It was held that no irrevocable trusts had been created.<sup>12</sup>

The mere intention to create a trust, without acts, is not sufficient. It has been held that frequent declarations on the part of a depositor, to the effect that money deposited in his name belongs to another, will not create a trust. And the party, in whose favor such declarations were made, was held not entitled to recover the deposit from the bank.<sup>13</sup>

### § 4. Effect of death of depositor upon tentative trust.

—In case the depositor of a trust fund dies before the beneficiary, leaving the account open and unexplained, without revocation, or some decisive act or declaration of disaffirmance, it is held in New York that the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor. This is the rule as it is stated in *Matter of Totten*.<sup>14</sup>

Thus, in New York, if A deposits his money in an account entitled "A in trust for B," the deposit in that form raises a presumption that A intended to create a trust in

12. *Lattan v. Van Ness*, (1905), 107 N. Y. App. Div. 393, 95 N. Y. Supp. 97.

13. *Smithwick v. Bank of Corning*, (Ark., 1910), 130 S. W. Rep. 166.

14. 179 N. Y. 112; 71 N. E. Rep. 748, (1904), at page 126.

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favor of B. He may at any time revoke this tentative trust and withdraw the money. If, however, by some decisive act, he indicates an unqualified intention of creating a trust, the trust becomes irrevocable and he cannot afterwards revoke it. If A dies before B the question of whether or not a trust was established remains one of intention on the part of the depositor. B may show that A gave him the pass book, saying that the money was his (B's), or did some other act which would as clearly show an intent to vest the fund in B, and thus establish his ownership of the money. On the other hand A's administrators, or executor, may produce evidence showing that A had no intention of making a trust in favor of B. The rule above stated is to the effect that, in such a case, where no evidence on behalf of either party is forthcoming, it will be conclusively presumed that A did intend to establish a trust as to the amount on deposit at his death, with B as the beneficiary, and the deposit will be awarded to B. It has been held in a number of cases that under these circumstances the deposit belongs to B.<sup>15</sup>

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15. *Williams v. Brooklyn Savings Bank*, (1900), 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021; *Proseus v. Porter*, (1897), 20 N. Y. App. Div. 44, 46 N. Y. Supp. 657; *Matter of Finn*, (1904), 44 Misc. Rep. (N. Y.) 622, 90 N. Y. Supp. 159; *Miller v. Seamen's Bank for Savings*, (1901), 33 Misc. Rep. (N. Y.) 708, 68 N. Y. Supp. 983; *Weaver v. Emigrant Industrial Savings Bank*, (1885), 17 Abb. N. C. (N. Y.) 82; *Gaffney's Estate*, (1891) 146 Pa. 49, 23 Atl. Rep. 163; *People's Savings Bank v. Webb*, (1899), 21 R. I. 218, 42 Atl. Rep. 874; *In Cunningham v. Davenport*, (1895), 147 N. Y. 43, 41 N. E. Rep. 412, it was said: "If the intent can be strengthened by acts and declarations of the depositor in his lifetime, amounting to a publication of his intent, a more satisfactory case is made out, but it is not absolutely essential, in the absence of explanation, where he dies leaving the trust account existing."

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This is a most important decision, for it *permits the accomplishment of the object for which a large number of trust accounts are opened*. Under its ruling a depositor may place his money in his name, in trust for the person he intends to receive the money after his death. He may draw upon the fund at will during his life and at his death, if there are no other circumstances indicating his intent than the fact of the deposit, it will be held that there was a trust as to the amount on deposit at the time of the depositor's death. In other words it practically allows the depositor to create a trust which will become effective only in the event of his death, which is contrary to the general rule applicable to trusts.<sup>16</sup>

This rule is not followed by the Massachusetts cases. In that state it is held that where the depositor of a trust account dies, having the pass book in his possession, without ever having notified the beneficiary of the deposit, and leaving the account open and unexplained, the money belongs to his estate and not to the beneficiary.<sup>17</sup>

The New York rule in this regard has been unqualifiedly repudiated in New Jersey. In a recent decision in that state it appeared that one Ellen Cunningham opened an account "in trust for Honora Finerty," the latter being a friend of the depositor. The person named as beneficiary did not learn of the deposit until after the death of the depositor. There was no evidence of any intent on the part of the depositor to create a trust, except the passbook, which always remained in the depositor's possession. In

16. See *infra*, section 11.

17. *Clark v. Clark*, (1871), 108 Mass. 522; *Keniston v. Mahew*, (1897), 169 Mass. 166, 47 N. E. Rep. 612. See also *Powers v. Provident Institution for Savings*, (1878), 124 Mass. 377.



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New York it would be held, upon these facts, that a valid trust was created, as to the amount on deposit at the time of the depositor's death, in favor of the beneficiary. But the New Jersey Court held that these facts were not sufficient to establish a trust.<sup>18</sup>

The doctrine laid down in New York has been further excepted to. Wilbur Larremore, in an article on "Judicial Legislation in New York," published in the Yale Law Journal,<sup>19</sup> makes the following observations:

"This decision has been widely commented upon by legal journals, and so far as the writer is aware has been unanimously disapproved. It is inconsistent with earlier authorities in the state of New York. It introduces a serious anomaly into the law of trusts. Indeed, a trust that is revocable at the will of the creator can hardly

18. *Nicklas v. Parker*, (N. J., 1905), 61 Atl. Rep. 267. In the opinion it was said: "The right of the person named as *cestui que trust* (Honora Finerty) to have the fund on deposit must rest upon one of two theories; i.e., that it was a gift *inter vivos* by the depositor to her, or that it was a valid trust now enforceable by her. In either event the intention must be clearly proven, and such intention must be shown to have been carried into effect by the donor or settlor. The nature and amount of proof required, and the essentials to be proven, are similar with respect to each of the two necessary contentions. The form of the transfer and the time of enjoyment by the beneficiary may be different with respect to a trust, but there must be some definiteness and clearness of proof of the completed execution of intention in the one case as in the other. It is clear that the depositor in this case did not intend to make a gift *inter vivos* to Honora Finerty of the money deposited. If she had intended to do this she would either have deposited the money in the name of Honora Finerty, so that the latter could have drawn it out at will, or, if she preferred to put it in the form of a trust, she would have vested Honora Finerty with power to draw immediately, or under conditions which she might specify, from the trust funds."

19. 14 Yale Law Journal, No. 6, p. 315.

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be said to be a trust at all. It impugns the authority of the statute of wills, by permitting a disposition of property to take effect only after death, without following the testamentary requirements. On the other hand, as a piece of constructive legislation, the decision could hardly be too highly praised. It effectuates a custom which has grown up among the humbler classes of people, who, in placing their money on deposit in trust for other persons, often intend to retain the right to use it, principal as well as interest, during life, but that whatever remains at the time of death shall go to the *cestui que trust*. Under the law as it stood, the estate of depositors who as trustees had drawn money from accounts would be liable to refund the same to the *cestui que trust*. The validation of the business custom in question seems so unobjectionable, indeed so desirable, that the writer has on various occasions advocated the enactment of a statute on just the lines laid down in the Matter of Totten. He did not believe that a court would venture upon such a radical innovation, and it is difficult to justify it as an exercise of judicial power."

**§ 5. Declarations of depositor showing an intent to create a trust.**—The depositor of a trust fund may make the trust irrevocable or absolute by declarations evidencing such an intent. In the case of *Hutton v. Smith*,<sup>20</sup> it appeared that an account was opened by Rose Ann Coyle, as "trustee, John Hutton." The money was later drawn out and used in the purchase of real estate.

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<sup>20</sup> 74 N. Y. App. Div. 284, 77 N. Y. Supp. 523; *Aff'd.*, 175 N. Y. 375, 67 N. E. Rep. 633, (1903).

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There was evidence that the depositor had made declarations to the effect that the money had been put in trust for John. She had also declared that the property, purchased with the trust fund, belonged to John. John himself testified that he accompanied Rose Ann Coyle at the time the money was withdrawn and the property purchased. It was held that there was a trust in favor of John and that he was entitled to impress a trust upon the real estate to the extent of the deposit.

In another instance it appeared that one Bridget Steggels had deposited her own money "in trust for John T. Scallan." Witnesses testified that the depositor had stated that she held the deposit for the benefit of Scallan. She retained the deposit book until the day before her death, when she delivered it to the executor of her will. It was held that the money belonged to Scallan, and not to the depositor's estate.<sup>21</sup>

In a Pennsylvania case,<sup>22</sup> it appeared that the depositor opened an account in her own name, "in trust for Mary Agnes Fitzgerald." Several deposits were made in the account from time to time and, during the time the deposits were being made, the depositor stated that she had "taken out a book" in her niece's name and that the

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21. *Scallan v. Brooks*, (1900), 54 N. Y. App. Div. 248, 66 N. Y. Supp. 591. For other cases involving declarations by the depositor see *Meislahm v. Meislahm*, (1900), 56 N. Y. App. Div. 566, 67 N. Y. Supp. 480, *O'Brien v. Williamsburg Savings Bank*, (1905), 101 N. Y. App. Div. 108, 91 N. Y. Supp. 908; *Anderson v. Thomson*, (N. Y. 1885), 38 Hun 394; *Gerrish v. New Bedford Institute for Savings* (1879), 128 Mass. 159; *Alger v. North End Savings Bank* (1888), 146 Mass. 418; 15 N. E. Rep. 916.

22. *Merigan v. McGonigle*, (1903), 205 Pa. 321, 54 Atl. Rep. 994.

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money belonged to the niece and was deposited for *her*. It was held that a valid trust was created.

§ 6. **Retention of pass book by depositor.**—The presumptive trust, which is established by a deposit by one person in trust for another, is not rebutted by the fact that the depositor retained the pass book in his possession.<sup>23</sup> Such a retention of the pass book is not inconsistent with the idea of trust. The depositor is deemed to have retained the book as trustee, and, being a trustee, he is a proper custodian.<sup>21</sup>

In this respect a trust differs from a gift. Where the claimant attempts to make out a gift of a bank account it is necessary to show a delivery of the pass book or some equivalent act.<sup>24</sup>

Where a trust account has been opened, the subsequent delivery of the pass book by the depositor to the beneficiary will convert the tentative trust, thus created, into

23. *Connecticut River Savings Bank v. Albee*, (1892), 64 Vt. 571, 25 Atl. Rep. 487; *Martin v. Funk*, (1878), 75 N. Y. 134; *Willis v. Smyth*, (1883), 91 N. Y. 297; *Graffing v. Heilman*, (1896), 1 N. Y. App. Div. 260, 37 N. Y. Supp. 253; *Robertson v. McCarty*, (1900), 54 N. Y. App. Div. 103, 66 N. Y. Supp. 327; *Marsh v. Keogh*, (1903) 82 N. Y. App. Div. 503, 81 N. Y. Supp. 825; *Williams v. Brooklyn Savings Bank*, (1900), 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021; *Haynes v. McKee* (1896), 18 Misc. Rep. (N. Y.) 361; 41 N. Y. Supp. 553. *Matter of Biggars*, (1902), 39 Misc. Rep. (N. Y.) 426, 80 N. Y. Supp. 214; *Weaver v. Emigrant Industrial Savings Bank*, (N. Y. 1885), 17 Abb. N. C. 82; *Gaffney's Estate*, (1891), 146 Pa. 49, 23 Atl. Rep. 163; *Bath Savings Institution v. Hathorn*, (1895), 88 Me. 122, 33 Atl. Rep. 836; *Ray v. Simmons*, (1875), 11 R. I. 266.

24. *Williams v. Brooklyn Savings Bank*, (1900), 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021; *Connecticut River Savings Bank v. Albee*, (1892), 64 Vt. 571, 25 Atl. Rep. 487.

25. See *infra*, section 26.

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an irrevocable trust. In the case of *Matter of Totten*,<sup>26</sup> where it was said that a tentative trust remains revocable at will "until the depositor dies or completes the gift in his life time by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary."

This rule has been held in other decisions.<sup>27</sup>

In the case of *Matter of Davis*,<sup>28</sup> three trust accounts were opened, each entitled "Marian Davis, in trust for William H. Davis." The money deposited belonged at the time of the deposit to Marian Davis absolutely. After the death of William H. Davis the pass books were found in his safety deposit vault. There was no other evidence tending to show the intent of the depositor. It was held that the deposit, standing alone, amounted to nothing more than a tentative trust. But the finding of the pass books in the vault of the beneficiary necessarily implied notice to the beneficiary. This was enough to render the trust irrevocable.

However, not every delivery of a pass book, representing a trust deposit, will convert the trust from a tentative one into one which is irrevocable. The delivery must be made in pursuance of the intent to make a gift. In one instance a father opened an account in favor of his son, entitled "Launcelot J. Tierney, in trust for Frank Tierney." The pass book was delivered to the son and was placed in a safe in his house. The father frequently

26. 179 N. Y. 112; 71 N. E. Rep. 748, (1904).

27. *Rush v. South Brooklyn Savings Institution*, (1909), 65 Misc. Rep. (N. Y.) 66, 119 N. Y. Supp. 726; *Matter of Davis*, (1907), 119 N. Y. App. Div. 35, 103 N. Y. Supp. 946.

28. 119 N. Y. App. Div. 35, 103 N. Y. Supp. 946, (1907).

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took the book for the purpose of making a deposit, or having the interest written up, and would return it later to the safe in his son's house. It did not appear that the father asked permission to take the book; he simply took it and returned it at his pleasure. It was held that this was not a sufficient delivery of the book to the son to render the trust irrevocable. In addition to the facts stated, however, it appeared that the father had made declarations showing that it was not his intention that the son should have an immediate interest in the fund.<sup>29</sup>

### § 7. Effect of failure to notify beneficiary of trust.—

While notice to the beneficiary that a trust deposit has been made in his favor is one means of converting a tentative trust into an irrevocable one, it is held in a number of cases that the fact that the depositor never in his lifetime divulged the deposit, or notified the beneficiary that it had been made, does not conclusively establish that no valid trust has been created. There may be a valid trust notwithstanding the beneficiary did not learn of the deposit until after the death of the depositor.<sup>30</sup>

29. *Tierney v. Fitzpatrick*, (1907), 122 N. Y. App. Div. 623, 107 N. Y. Supp. 527.

30. *Martin v. Funk*, (1878), 75 N. Y. 134; *Jenkins v. Baker*, (1902), 77 N. Y. App. Div. 509, 78 N. Y. Supp. 1074; *Robertson v. McCarty*, (1900), 54 N. Y. App. Div. 103, 66 N. Y. Supp. 327; *Williams v. Brooklyn Savings Bank*, (1900), 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021; *Matter of Biggars*, (1902), 39 Misc. Rep. (N. Y.) 426, 80 N. Y. Supp. 214; *Weaver v. Emigrant Industrial Savings Bank*, (N. Y. 1885), 17 Abb. N. C. 82; *Scott v. Harbeck*, (1888), 49 Hun (N. Y.) 292, 1 N. Y. Supp. 788; *Bath Savings Institution v. Harthorn*, (1895), 88 Me. 122, 33 Atl. Rep. 836; *Gerrish v. New Bedford Institution for Savings* (1879), 128 Mass. 159. In *Williams v. Brooklyn Savings Bank* (supra), it was said: "Knowledge of the beneficiary was not essential."

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In one instance several accounts were opened in the name of Isaac S. Allen, "in trust for Cynthia S. Weaver," the latter being the daughter of the depositor. Cynthia Weaver did not learn of the deposits until after the death of her father, when the pass books came into the possession of his executor. In an action, which she brought against the bank, it was held that the failure to notify her of the deposits was immaterial, and that she was entitled to the money.<sup>31</sup>

But the omission of the depositor to give notice to the beneficiary may, under some circumstances, have significance as evidence tending to show that there was no intention to create a valid trust.<sup>32</sup>

On the other hand, where the depositor notifies the beneficiary that the deposit has been made, the act of notification renders the trust irrevocable.<sup>33</sup>

**§ 8. Limit to amount of individual deposit as explanatory of depositors intent.**—In many states there are statutes under which no individual depositor is allowed to deposit more than a certain amount in any one savings bank. Savings banks are intended as a means of enabling people of small means to safely invest their savings in a manner in which they will be assured of a reasonably adequate return upon their money. It is not their object

31. *Weaver v. Emigrant Industrial Savings Bank*, (1885), 17 Abb. N. C. 82.

32. *Bath Savings Institution v. Fogg*, (1906), 101 Me. 188, 63 Alt. Rep. 731.

33. *Matter of Totten*, (1904), 179 N. Y. 112, 71 N. E. Rep. 748; *Kelly v. National Savings Bank*, (1908), 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216; *Petition of Joanna E. Atkinson*, (1889), 16 R. I. 413, 16 Atl. Rep. 712.

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to provide facilities for the investment of large sums of money. Presumably it is with the object of carrying out this idea that these statutes have been enacted. Consequently, in many instances, where a deposit has been made in trust for some person, and the depositor has an account standing in his individual name in the same bank, the argument has been advanced that the object of the depositor, in opening the account, was not to give title to the fund to the beneficiary named, but to evade the deposit limit. The same argument has been used where the deposit is limited in amount, not by statute, but by a rule of the bank.

In *Matter of Mueller*,<sup>34</sup> it appeared that one Henry Dohrmann had a deposit in his own name in a savings bank, amounting to \$2447.17. He also opened an account in his name "in trust for Katie Dohrmann," in which was deposited the sum of \$1265.00. It appeared that the object of opening the second account was to get around the New York statute, limiting the amount, exclusive of interest, which may be carried to the credit of an individual depositor in a savings bank, to \$3,000.00. It being thus clearly established that Henry Dohrmann did not intend to give to the beneficiary any interest in the deposit, it was held that the deposit, upon his death, belonged to his estate, and not to Katie Dohrmann, notwithstanding the form of the deposit. This is but a repetition of the rule that the existence of a trust of a bank account depends upon the intent of the depositor. In cases of this kind the object of the depositor is shown

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34. 15 N. Y. App. Div. 67, 44 N. Y. Supp. 280 (1897).



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to be the evasion of a statute or bank rule, which is, of course, inconsistent with the intent to create a trust.

In other words, where it actually appears that the object of the depositor in making the deposit was to avoid some statute, or by-law of the bank, limiting the amount to be accepted from any individual depositor, it will be held, that no trust was created, upon the theory that the intent of the depositor governs.<sup>35</sup>

In a New York case, where the defendant deposited money in a savings bank in his name, in trust for the plaintiff, his daughter, it appeared that he made the deposit in this form in order to obtain a higher rate of interest and that he had no intention of parting with the ownership of the fund. To protect the defendant it was agreed between the plaintiff and the bank that no sums should be withdrawn without the production of the pass book, and the defendant always retained possession of the book. It was held that no trust was created in favor of the daughter.<sup>36</sup>

The argument, however, that the object of the depositor, having two different accounts in the same savings bank, is a scheme to obtain interest on a larger deposit than would otherwise be allowed, is not generally favored by the courts. The mere fact that the depositor has opened two accounts in one bank, standing alone, is not sufficient to controvert the apparent intent of the depositor in opening the trust account.<sup>37</sup>

35. *Brabrook v. Boston Five Cents Savings Bank*, (1870), 104 Mass. 228. See also *Parkham v. Suffolk Savings Bank for Seamen*, (1890), 151 Mass. 218, 24 N. E. Rep. 43.

36. *Weber v. Weber*, (N. Y. 1880), 9 Daly 211.

37. *Meislahm v. Meislahm*, (1900), 56 N. Y. App. Div. 566,

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The reason for this is that the transaction is open to other equally plausible explanations and that dishonesty of motive is not to be thus easily imputed to the depositor. In one case it was said: "The argument at best is speculation upon a possible motive. \* \* \* The argument based upon a scheme for interest does not carry special force in any given case; for it is available in every case where the depositor's own funds in the same bank have reached the limit." The court here called attention to the fact that, if the deposit had been made for the sole purpose of evading the rule as to limit in the amount of deposit, there were other banks open to the depositor, in which he might have deposited the money in his own name.<sup>38</sup>

In *Miller v. Seamen's Bank for Savings*,<sup>39</sup> it was said that such a motive should not be attributed to a depositor on mere suspicion. In a case arising in Pennsylvania it was contended that the object of the depositor in opening a trust account was to thereby increase his deposit in the bank beyond the limit allowed to one person. But the only evidence offered in substantiation of this contention was the fact that the depositor died leaving two accounts in the bank, one in his own name and one in his name, as "trustee for Polly McKim." This

67 N. Y. Supp. 480; *Williams v. Brooklyn Savings Bank*, (1900) 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021; *Miller v. Seamen's Bank for Savings*, (1901), 33 Misc. Rep. (N. Y.) 708, 68 N. Y. Supp. 983; *Gaffney's Estate*, (1891), 146 Pa. 49, 23 Atl. Rep. 163; *Merigan v. McGonigle*, (1903), 205 Pa. 321, 54 Atl. Rep. 994; *Ray v. Simmons*, (1875), 11 R. I. 266.

38. *Williams v. Brooklyn Savings Bank*, (1900) 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021.

39. 33 Misc. Rep. 708, 68 N. Y. Supp. 983 (1901).

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was held to be insufficient and it was decided that there was a valid trust in favor of Polly McKim.<sup>40</sup>

In another Pennsylvania case the same contention was unsuccessfully advanced. It appeared that there was a rule of the Philadelphia Saving Fund Society, under which the deposits by any one person were limited to \$300 per annum. In 1889 Mary Fitzgerald, a widow, opened an account in her own name by depositing \$300.00. In the same year she deposited \$300.00 in her name "in trust for Mary Agnes Fitzgerald," her niece. Each year, for several years thereafter, she deposited a like amount in each account. In answer to the argument that the object of the depositor was to deposit beyond the amount permitted to any one person, the court said: "This evidence was little more than a scintilla, and could not prevail against the admitted facts showing a contrary purpose."<sup>41</sup>

Even where a depositor, upon being notified by an official of the bank in which his deposit was kept that the amount was in excess of the amount not subject to tax by the state, thereafter transferred a portion of the account to a trust account for this son, and stated that his object was to avoid taxation, it was held that his action was not inconsistent with the creation of a valid trust.<sup>42</sup>

**§ 9. Withdrawal of interest by depositor.**—It is held that, where a person deposits his money in a bank in

40. Gaffney's Estate (1891), 146 Pa. 49, 23 Atl. Rep. 163.

41. Merigan v. McGonigle, (1903), 205 Pa. 321, 54 Atl. Rep. 994.

42. Connecticut River Savings Bank v. Albee, (1892), 64 Vt. 571, 25 Atl. Rep. 487.

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his name in trust for another, the fact that he draws out and uses the interest on the deposit from time to time does not establish that he did not intend to create a trust in favor of the beneficiary named.<sup>43</sup>

In the case of *Grafing v. Heilmann*,<sup>44</sup> the depositor of a trust account drew the interest on the deposit regularly until the time of his death. It was held that the fact that the depositor reserved for himself the interest on the deposit during his lifetime was immaterial and that there was, nevertheless, a valid trust.

§ 10. **Withdrawal of principal.**—Where an irrevocable trust has been created the subsequent withdrawal of part or all of the deposit by the depositor and its appropriation to his own use does not deprive the beneficiary of his right to the part withdrawn. If the depositor takes and uses part or all of the deposit the beneficiary can compel restitution, and in event of the depositor's death, the beneficiary is entitled to claim against his estate for the moneys withdrawn.

In *Proseus v. Porter*,<sup>45</sup> the depositor, a Mrs. Proseus,

43. *Grafing v. Heilmann*, (1896), 1 N. Y. App. Div. 260, 37 N. Y. Supp. 253; *Willis v. Smyth*, (1883), 91 N. Y. 297; *Matter of Collyer*, (N. Y. 1885), 4 Dem. Surr. 24; *Ray v. Simmons*, (1875), 11 R. I. 266; *O'Neil v. Greenwood*, (1895), 106 Mich. 572, 64 N. W. Rep. 511.

44. 1 N. Y. App. Div. 260, 37 N. Y. Supp. 253 (1896).

45. 20 N. Y. App. Div. 44; 46 N. Y. Supp. 657, (1897). See also the cases of *Mabie v. Bailey*, (1884), 95 N. Y. 206, and *Farleigh v. Cadman*, (1899), 159 N. Y. 169. In the former case a deposit in the form of a trust was strengthened by evidence of statements on the part of the depositor showing an intent to create a trust. It was held that after the depositor's death the beneficiary was entitled to recover from the depositor's estate sums which the de-

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just before sailing for Europe, opened an account in her name "in trust for Charlotte Porter," her sister. The pass book was delivered to the beneficiary. After her return from Europe Mrs. Proseus made various deposits and withdrawals from the account. In an action which was started after the death of Mrs. Proseus it was claimed that the deposits in and withdrawals from the account were inconsistent with an intention to create a trust. "Undoubtedly," said the court, "these acts tend to disprove a trust, but they are by no means conclusive."

In some of the earlier cases, wherein it appeared simply that a deposit had been made by one person in trust for another, without evidence of declarations or other acts of the depositor, tending to establish intention, it has been held that the beneficiary of the trust was entitled, after the depositor's death, leaving the account open and unexplained, to recover from the depositor's estate such amounts as the depositor had withdrawn after the account was started. These cases adopted the theory that a deposit by one person in trust for another, and the

positor had withdrawn from the account. In the latter case evidence was produced in addition to the form of the deposit clearly showing an intention to create a trust. It was held that the depositor had no power, when the beneficiary subsequently incurred his disfavor, to divert the trust fund to another beneficiary, by closing the trust account and opening another, and that the first beneficiary was entitled to recover from the second, who had received the trust fund from the bank in which it was deposited. Instances in which the depositor's estate has been charged with the amount which the depositor used out of a trust fund which he had established are *Minor v. Rogers*, (1873), 40 Conn. 512, and *Macy v. Williams*, (1890), 55 Hun (N. Y.) 489, 8 N. Y. Supp. 658; *aff'd.*, 125 N. Y. 767, 27 N. E. Rep. 409.

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subsequent death of the depositor, leaving the account open and unexplained, established an irrevocable trust, as of the time of the making of the deposit. Hence its subsequent withdrawal did not deprive the beneficiary of his right to the fund, and left the depositor's estate liable to him for the amount diverted.

In a New York case it appeared that the sum of \$3,000 was deposited in the Bowery Savings Bank under the title of "Stout Robertson in trust for Cornelius S., brother." The money belonged to Stout, who retained the pass book until the time of his death a few months later. Cornelius had no knowledge of the account until after his brother's death. During his lifetime Stout drew out and used \$2,000.00 of the deposit. In an action by Cornelius against the administrator, the latter did not dispute the validity of Cornelius' claim as to the \$1,000 remaining on deposit, but he claimed that the trust was revoked as to the amount withdrawn. It was held that the estate was liable to Cornelius for the amount withdrawn. The deposit created an irrevocable trust which in the absence of the reservation of the power of revocation could not be revoked.<sup>47</sup>

This case, however, and those which hold with it have been overruled. Under the leadership of the Totten case,<sup>48</sup> it is now the rule, in New York at least, that

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47. *Robertson v. McCarty*, (1900), 54 N. Y. App. Div. 103, 66 N. Y. Supp. 327. For similar decisions see *Jenkins v. Baker*, (1902), 77 N. Y. App. Div. 509, 78 N. Y. Supp. 1074, and *Marsh v. Keogh*, (1903), 82 N. Y. App. Div. 503, 78 N. Y. Supp. 1074.

48. *Matter of Totten*, (1904), 179 N. Y. 112, 71 N. E. Rep. 748. See also *Rush v. South Brooklyn Savings Institution*, (1909), 65 Misc. Rep. (N. Y.) 66, 119 N. Y. Supp. 726; *Tierney v. Fitz-*

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where the depositor of a tentative trust dies before the beneficiary without revocation, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created *as to the balance on hand at the death of the depositor*. By tentative trust is signified a deposit by one person of his own money, in his own name as trustee for another, which at the time of the depositor's death is left open and unexplained. Of course, as stated above, where there is evidence of acts showing the creation of an absolute trust, such as delivery of the pass book to the beneficiary, the depositor, or his estate, is liable to the beneficiary for amounts withdrawn by the depositor.

In other jurisdictions, where the doctrine of tentative trusts, exploited in the Totten case, has not been adopted, it would be held that, where the depositor of money in a trust account died without notifying the beneficiary of the trust, and without taking any step to complete the trust, there would be no trust at all. Consequently the depositor's estate would not be responsible to the beneficiary if the beneficiary had drawn and used part or all of the fund.

It has been held that a notice to a bank by the depositor of a fund in trust of his intention to withdraw the money, where the bank was insisting upon its statutory right to sixty days' notice of withdrawal, is as effectual

patrick, (1907), 122 N. Y. App. Div. 623, 107 N. Y. Supp. 527; and *Matter of Biggars*, (1902), 39 Misc. Rep. (N. Y.) 426, 80 N.Y. Supp. 214, wherein it was said that the depositor "was under no obligation to the beneficiary to maintain the fund at the highest point it might reach." In this case it appeared that the beneficiary had the benefit of some of the money withdrawn.

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to revoke a tentative trust as the actual withdrawal of the money.<sup>49</sup>

§ 11. **Trust to become effective upon depositor's death.**—Where it appears that the depositor placed his money in a trust account, with the intention that the beneficiary should not take any interest except in case of the depositor's death, the money belongs at his death to his estate, and not to the beneficiary. In order to create a valid trust there must be an intent on the part of the depositor to give the beneficiary an interest *in præsenti*. The reason for this is that a trust, which is not to have any effect except in case of the death of the person creating the trust, is violative of the statute of wills. There is but one valid method of creating an estate which springs into existence only in the event of the death of the transferor and that is by means of a will. Wills must be executed in accordance with certain statutory requirements. They must be written; they must be signed; they must be subscribed by witnesses, varying in number according to the jurisdiction, etc. It is apparent that a deposit in a bank in trust for some person does not fulfil these requirements. If, then, a bank deposit trust is in such form that the person designated as beneficiary gains no rights in the fund except in case he survives the depositor, no valid trust is created and the ownership of the money remains in the depositor.

In the case of *Tierney v. Fitzpatrick*,<sup>50</sup> it was shown that

49. *Rush v. South Brooklyn Savings Institution*, (1909), 65 Misc. Rep. (N. Y.) 66, 119 N. Y. Supp. 726.

50. 122 N. Y. App. Div. 623, 107 N. Y. Supp. 527, (1907).



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the depositor of a fund in his own name as trustee for his son had said to an acquaintance: "I will tell you one thing, Tim, I have fixed Frank (the beneficiary) in case of my death that he will be perfectly independent, if any thing should happen to him with his rheumatism, to keep him away from his plumbing business." This declaration showed that it was the depositor's intention that his son should have the fund only in case of the depositor's death. It was held that, upon the death of the depositor, the money belonged to his estate, and not to his son.

In another instance it appeared that a depositor, owning seven bank accounts, had them transferred to himself in trust for certain persons. The depositor retained possession of the pass books until his death and treated the accounts as his own. On one occasion he exhibited the books to three of the persons he had named as beneficiaries and told them he would take the interest as long as he lived, but that when he died the books would belong to them respectively. This, the court held, was not an indication of an intention to make a present gift, but was rather an expression of what the depositor supposed would happen after his title to the principal had ceased by his death. Apparently he had no intention to pass title to the accounts during his lifetime. He tried to make a transfer, which would become effective upon his death. This, however, he could not do, except by will.<sup>51</sup>

51. *Magee v. Knight*, (1907), 194 Mass. 546, 80 N. E. Rep. 620. In *Lee v. Kennedy*, (1898), 25 Misc. Rep. (N. Y.) 141, 54 N. Y. Supp. 155, a deposit was made in the name of "Ann Kennedy, for niece, Ann Lee." Ann Kennedy drew out the money and subsequently Ann Lee died. This action was brought by the ad-

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In a New Jersey case a depositor ordered the following entry to be made in her account in the Provident Savings Institution, of Jersey City: "Frank B. Smith, hatter, Danbury, Conn., son of Joseph Smith and Cornelia; to be drawn by Rachel (depositor); after death, by Frank." Frank Smith was the depositor's nephew. In her pass book in the Howard Savings Institution, of Newark, N. J., she caused the following entry to be made: "This account is in trust for Frank B. Smith," and signed it with her own name. She kept the pass books of both accounts in her possession and drew the dividends up to the time when she was duly declared to be of unsound mind. Her husband was appointed her guardian, and, as such, claimed the right to draw the money. The nephew sued the guardian, claiming that the depositor had declared a trust of the moneys in his favor. It appeared that the depositor had told the nephew that she had all her money "put in trust" for him, but that both of them understood that he was not to have any of it until her death. It was held that it was clear that the

ministratrix of Ann Lee against Ann Kennedy to recover the trust deposit. Proof offered on behalf of Ann Kennedy showed that, at the time of the deposit, she told the bank officer that she wanted to put the money in trust for the girl; that she was not to get the money "until after my death, and unless she remains with me, she won't get it." The court held that there was no irrevocable trust created. The beneficiary was not to get the money unless she continued to live with Ann Kennedy, and unless she survived the latter. Neither condition was fulfilled. Assuming that there was a trust, it was of a qualified nature, and was defeated upon a failure of the conditions upon which it was limited. See also *Parcher v. Saco & Biddeford Savings Institution*, (1886), 78 Me. 470, 7 Atl. Rep. 266; *Nutt v. Morse*, (1886), 142 Mass. 1, 6 N. E. Rep. 763; *Bartlett v. Remington*, (1878), 59 N. H. 364.

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depositor did not intend to part with her complete and absolute control over the funds and that she had not parted with title thereto. Her design in making the entries evidently was to make a deposition of a testamentary character and the nephew, therefore, had no valid claim.<sup>52</sup>

But in New York, as has already been shown, the practical effect of the Totten case is to permit the creation of a trust to become effective only in case of the depositor's death.<sup>53</sup>

There have been many instances of trusts, the substantial result of which was to make a disposition to take effect after the death of the person creating the trust, the settlor, as he is usually called. Thus cases are frequent where the owner of property has, voluntarily and without consideration, conveyed it to another to hold in trust for the benefit and enjoyment of the settlor during his life, and on his death to hold it in trust for other beneficiaries, or to pay it over to certain persons.

Such a trust does not operate as a will. The essential difference between it and a will is that, in the case of the trust, the interest of the beneficiaries vests immediately, but the will does not take effect until the death of the testator and until that time no interest vests in the beneficiaries.<sup>54</sup>

Where the depositor indicates that it is his intention that the person for whom the money is deposited in trust shall have a present interest in the fund, the fact that the

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52. *Smith v. Speer*, (1881), 34 N. J. Eq. 336.

53. See *supra*, section 4.

54. *Perry on Trusts*, page 115, note a.

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use of the fund by the beneficiary is postponed until the death of the depositor will not defeat the trust. It is sufficient if an interest vests in the beneficiary at the time of the deposit.<sup>55</sup>

If the trust is once perfectly created, with an intelligent comprehension of the nature of the act, it is irrevocable, even though voluntarily made. It is true that the settlor may reserve a right to revoke the trust and that such reservation is perfectly consistent with the creation of a valid trust. But a reservation by the settlor of power to change the beneficiaries or revoke the trust at will is looked upon with considerable suspicion by the courts, and, if convinced that the only object of the settlor was to make a revocable disposition to take effect after his death, the trust will not be sustained.

There is one striking instance of the reservation of such a power, wherein the trust was held to be invalid. The case is *McEvoy v. Boston Five Cents Savings Bank*,<sup>56</sup> wherein the owner of two savings bank deposits assigned them by a written instrument to a trustee, to be devoted to certain designated purposes after her death. Among other things, the assignment provided: "The said trustee shall pay to me such moneys as I shall demand of him at any time during my life until I have used the amount

55. *Robinson v. Appleby*, (1902), 69 N. Y. App. Div. 509, 75 N. Y. Supp. 1, Aff'd., 173 N. Y. 626, 66 N. E. Rep. 1115; *Grafiug v. Heilman* (1896), 1 N. Y. App. Div. 260, 37 N. Y. Supp. 253; *Matter of Biggars*, (1902), 39 Misc. Rep. (N. Y.) 426, 80 N. Y. Supp. 214; *Matter of King*, (1906), 51 Misc. Rep. (N. Y.) 375, 101 N. Y. Supp. 279; *In re Podhajsky's Estate*, (1908), 137 Iowa 742, 115 N. W. Rep. 590; *Scrivens v. North Easton Savings Bank*, (1896), 166 Mass. 255, 44 N. E. Rep. 251.

56. 201 Mass. 50, 87 N. E. Rep. 465 (1909).

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conveyed to him by this deed." It was also provided: "I hereby reserve to myself the right to revoke this deed at any time during my life." Thus, the depositor retained the right to use the funds during her life and to revoke the trust at will. It was held that the assignment was intended to operate as a testamentary disposition and was invalid because not executed in conformity with the statute of wills.

§ 12. **Trust in favor of fictitious person.**—A depositor, who deposits his money in his name, in trust for a fictitious person, does not thereby lose title to the money. In the case of *Garvey v. Clifford*,<sup>57</sup> the facts showed that in February, 1890, Patrick Sheedy deposited the sum of \$3,000.00 in the Bowery Savings Bank in New York City under this title: "Patrick Sheedy, in trust for Johanna Sheedy." It appeared that the depositor had a sister Johanna, but that thirty years before the time of the deposit she had married and taken the name of Dwyer. The sister died in 1898 and the account remained in the same condition until the death of the depositor in 1903. It was held that there was no trust, one reason being that the deposit was made in favor of a fictitious beneficiary.

§ 13. **Trust deposit in favor of creditor.**—It has been held that where a person deposits money in his name

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57. 114 N. Y. App. Div. 193, 99 N. Y. Supp. 555, (1905). See *Nicklas v. Parker*, (1905), 69 N. J. Eq. 743, 61 Atl. Rep. 267, where deposits were made in trust for two persons who had been dead for several years at the time of the deposits, and *Washington v. Bank for Savings*, (1901), 65 N. Y. App. Div. 338, aff'd., 171 N. Y. 166, where the depositor opened two accounts in trust for her sons and it appeared that never had any children.

## TRUST DEPOSITS

in trust for one, to whom the depositor *is indebted*, the deposit will not, in the absence of evidence to the contrary, be construed to be a payment of the debt. In the case of *Matter of Hewitt*,<sup>58</sup> one Edward Goodheart had opened an account in his name in trust for Robert C. Hewitt, to whom, it appeared Goodheart was indebted on two notes for \$100.00 each. After Goodheart's death Hewitt qualified as his executor. Hewitt retained the trust deposit and collected the amount of the notes out of the estate. It was held that Hewitt was justified in his action, as the trust did not operate as a payment of the notes.

**§ 14. Effect of failure to refer to trust fund in will.**—The fact that a person, who has deposited money in his name in trust for some other person, subsequently executes a will, in which no reference is made to the trust fund, has been held to strengthen the indication that the depositor intended to create a trust. The failure to refer to the fund in the will, which purports to dispose of all of the depositor's property, tends to show that the depositor believes that the trust deposit is already effectually disposed of.<sup>59</sup>

**§ 15. Effect of death of beneficiary before depositor.**—In a case where an irrevocable trust has been created the death of the beneficiary does not cause a lapsing of the trust. The interest of the beneficiary passes to his next of kin or, if he has made a will, to the persons designated

58. 40 Misc. Rep. (N. Y.) 322, 81 N. Y. Supp. 1030, (1903).

59. *Proseus v. Porter*, (1897), 20 N. Y. App. Div. 44, 46 N. Y. Supp. 657.

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therein. But, in a case where there is no further evidence of an intent to create a trust than is supplied by the mere form of the deposit, the death of the beneficiary before that of the depositor terminates the trust.<sup>60</sup>

§ 16. **Liability of bank in paying trust deposit.**—During the lifetime of the trustee the bank may pay the drafts of the trustee drawn upon the fund without liability. The bank is under no legal duty to inquire into the use to be made of the money by the trustee, and, if the trustee makes an improper use of the money, the bank is not liable.<sup>61</sup>

But, if the trustee is indebted to the bank, the bank will not be permitted to accept payment of the indebtedness out of the trust fund. This would be a violation of the trust, of which the bank would have notice, and the transaction would not be binding as against the beneficiary. The beneficiary might afterwards ratify the payment and hold the trustee liable, or he might repudiate the payment and hold the bank.<sup>62</sup>

A bank is held not to incur liability in paying a trust deposit to the administrator of the depositor. In one case it appeared that, in 1866, one Susan Boone made a

60. *Matter of Duffy*, (1908), 127 N. Y. App. Div. 74, 111 N. Y. Supp. 77; *Matter of United States Trust Company*, (1907), 117 N. Y. App. Div. 178; *Aff'd.*, 189 N. Y. 500; *Garvey v. Clifford*, (1906), 114 N. Y. App. Div. 193, 99 N. Y. Supp. 555; *In re Bulwinkle* (1905), 107 N. Y. App. Div. 331, 95 N. Y. Supp. 176; For a decision holding the contrary see *Bishop v. Seamen's Bank*, (1898), 33 App. Div. 181, 53 N. Y. Supp. 488.

61. *Sayre v. Weil*, (1891), 94 Ala. 466, 10 So. Rep. 546; *Pennsylvania Title and Trust Co. v. Meyer*, (1902), 201 Pa. 299, 50 Atl. Rep. 998.

62. *Sayre v. Weil*, (1891), 94 Ala. 466, 10 So. Rep. 546.

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deposit in a savings bank in her name "in trust for Christopher Boone." After Mrs. Boone's death the bank paid the deposit to the administrator of her estate. It was provided in the by-laws of the bank that payments to persons producing pass books would discharge the bank, and that, on the death of the depositor, the deposit might be paid to his legal representatives. The administrator of Christopher Boone brought suit against the bank. It was held that the payment discharged the bank, the bank having had no notice of a claim in favor of the beneficiary. The contract of the bank was to pay the deposit to the trustee on demand. The obligation to pay was strengthened by the provisions of the by-laws. Upon the death of the depositor the right to demand payment devolved upon her administrator. In fact the bank had no alternative but to pay. It had no right to inquire into the character of the trust, and owed no duty to the beneficiary, until the latter, by notice, created such a duty.<sup>63</sup>

The bank was also held to be free from liability where it paid over a trust fund to the representatives of the beneficiary of the fund before any demand was made on the bank by the representatives of the trustee.<sup>64</sup>

But when a bank has received notice from one of the parties to a trust deposit that the deposit is claimed by that party, the bank will be held liable if it pays the fund to the other party and it turns out that the party giving notice was entitled. In other words, where both parties

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63. *Boone v. Citizens' Savings Bank*, (1881), 84 N. Y. 83.

64. *Bishop v. Seamen's Bank for Savings*, (1898), 33 N. Y. App. Div. 181, 53 N. Y. Supp. 488.



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claim the fund the bank, if it pays to either, assumes the responsibility of determining which of the two parties is rightfully entitled to the money. As a correct determination of this question often depends upon facts and circumstances not within the bank's knowledge, payment to either is dangerous. If the bank makes a mistake in selecting the party to whom the money belongs legally it must pay the amount over again at the instance of the party who has thus been wrongfully deprived of the money. The only safe course for a bank to pursue in such a case is to hold the fund until one of the two establishes his right to the fund by an action brought for that purpose.

In the case of *Fowler v. Bowery Savings Bank*,<sup>65</sup> the contest was over a deposit by John White, in trust for his wife, Elizabeth White. The action was brought by the executor of Elizabeth White and the bank's defense was that it had paid the executor of John White under the authority of the case of *Boone v. Citizens' Savings Bank*, (*supra*). But it here appeared that, before the payment to John's executor, the bank had notice of the claim of the estate of Elizabeth. The executor of Elizabeth testified that he called at the bank, exhibited his letters testamentary, and that he was told by an officer of the bank that he would be paid upon producing the pass book. This was held to be sufficient notice to the bank. It was held, therefore, that the bank was not justified in paying John's executor and that it was liable for the amount to the executor of Elizabeth.

Where a deposit was made in trust for a grandchild of

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65. 47 Hun (N. Y.) 399, (1888).

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the depositor, it was held that the bank, which paid the deposit to the father of the beneficiary, upon the production of the pass book, was liable to the beneficiary for the amount paid.<sup>66</sup>

There are statutes in several of the states which provide for the payment of trust deposits by the banks holding them. A careful reading of the statutes will disclose that they provide in general that, where the bank has no notice of the terms of the trust, it may, after the death of the trustee, pay the deposit to the beneficiary. These statutes, it should be noted, do not alter the rights of the parties to the trust. They do not pretend to transform into a valid trust a transaction which does not constitute a valid trust apart from the statute. Their object is to protect the bank which pays a trust deposit in good faith. If, after the deposit has been paid, it develops that no valid trust was created in the first instance, then the parties are left to determine their rights between themselves. They cannot come back upon the bank.<sup>67</sup>

**§ 17. Beneficiary cannot compel bank to pay during the life of the trustee.**—A bank, in which a deposit is made in the name of the depositor in trust for some person, cannot be compelled, at the instance of the beneficiary of the trust to pay over the fund, while the trustee is still living, unless the trustee consents or is made a party to the action. The contract of the bank is with the trustee, and it cannot

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66. *Ficken v. Emigrant Industrial Savings Bank*, (1900), 33 Misc. Rep. (N. Y.) 92, 67 N. Y. Supp. 143.

67. For the text of the statutes, which have been enacted in the different states, see Appendix B.

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be made to recognize the right of any other person to exercise dominion over the fund. To compel the bank to recognize the claim of the beneficiary would be to subject it to subsequent attacks by the original depositor.<sup>68</sup>

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68. *Hemmerich v. Union Dime Savings Institution*, (1911), 129 N. Y. Supp. 267.

## **PART II.**

### **JOINT AND ALTERNATE DEPOSITS.**

§ 18. **Joint and alternate deposits.**—What has been said in section 1, with reference to trust deposits, applies in general to joint and alternate deposits. Accounts of this character are opened for the same general purposes and they are closed with the same uncertainty of result. There is also the same conflict in the decisions as to the effect of such deposits.

In using the expression "joint deposit," we refer to a deposit made in two names connected by the word "and." An alternate deposit has reference to a deposit in two names connected by the word "or." In the case of either deposit the right of the bank to pay upon the signature of one of the parties would depend upon the contract between the bank and the depositor, or depositors. In the absence of any agreement, or of any notice to the bank by one of the parties not to pay, the bank would be justified in paying either party in the case of an alternate deposit. Thus, if A deposited money in a savings bank in the names of "A or B," the bank would be protected in paying B upon his production of the pass book. But, as a general rule, the matter of drawing the money is usually fixed by the parties at the time of opening the account. When the deposit is opened in the names of "A and B" the account is usually marked

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with the words "pay either," or words to that effect, making it virtually an alternate deposit. The right of the bank to pay in such cases is controlled in many states by statute.

In general it is immaterial whether the word "and" or "or" is used in connecting the names of the two persons named as depositors. A trust, or a gift, of the deposit may be created by the use of either word. In matter of Meehan,<sup>69</sup> where a husband opened three bank accounts in the names of himself and his wife, two of which were entitled "Christopher and Mary," and one, "Christopher or Mary," with the intention of making a gift to the wife, it was held that the use of the word "or" between the names in one of the accounts, instead of "and," in no way lessened the effect of the deposit.

§ 19. **Trust created by joint or alternate deposit.**—A joint or alternate deposit has been held in some instances to operate as a trust. In one such instance it appeared that A, who had a savings bank account, signed the following paper: "To Oakland Bank of Savings, May 17, 1892, in re savings deposit 7041, in my name. Pay to the individual order of either B, or C, or myself. (signed) "A." It was held that, upon the death of A, while the transaction fell short of being a gift to B and C, there was a valid trust in favor of B and C as to the amount on deposit at the time of A's death.<sup>70</sup>

In another case it appeared that one Helena Roche had a deposit in her name in the Hoboken Bank for Savings.

69. 59 N. Y. App. Div. 156, 69 N. Y. Supp. 9, (1901).

70. Booth v. Oakland Bank of Savings (1898), 122 Cal. 19, 54 Pac. Rep. 370.

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Accompanied by her grandson, Henry Schwoon, she went to the bank and caused her pass book to be changed to read as follows: "Helena Roche or Hy. Schwoon, in account with Hoboken Bank for Savings, payable to either or survivor." At the same time she signed a paper authorizing the bank to make the change, and stating that she and her grandson would be copartners in the ownership of the money, and that either or the survivor might draw. The depositor delivered the pass book to a friend with instructions to give it to Schwoon upon her death. It was held that the signing of the statement at the bank, the opening of the alternate account, and the delivery of the book to a third person for Schwoon constituted a complete declaration of trust.<sup>71</sup>

In construing a joint or alternate deposit as a trust by the depositor in favor of the person named as co-depositor the same rules should apply to cases involving deposits by one person in trust for another, which have already been discussed. Whether or not a trust has been created depends upon the intent of the depositor. If it appears that it was not his intention to create a trust, then that intent should govern. But the intent alone is

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71. *Hoboken Bank for Savings v. Schwoon*, (1901), 62 N. J. Eq. 503, 50 Atl. Rep. 490. In the opinion it was said: "The objection of this mode of making a gift is that it is testamentary in its character, and, in effect, a will, and therefore void under our statute. In support of this conclusion is pointed out the circumstance that the power of disposition by the donor continues during his or her lifetime. But this circumstance has not deterred the courts from giving effect to such arrangements. This has been done on two grounds: First, that a joint estate or interest is created, with an express right of survivorship, which operates naturally and legally upon whatever of the fund remains unused at the death of the donor; and, second, on the ground of a completed trust."

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not sufficient. It must further appear that the intent was properly executed.<sup>72</sup>

The mere deposit of money in the name of one person, payable to another, will not create a valid trust.<sup>73</sup>

It has been held that, where the depositor has the money placed in the name of another, "subject also to the control of" the depositor, that fact, and in addition thereto, evidence that the depositor made declarations showing an intention to create a trust, is sufficient to establish a trust in favor of the person named.<sup>74</sup>

In a recently decided California case it was held that where a depositor directed the bank to alter his account so as to stand in the names of himself and his son, as "joint owners, payable to either or the survivor," the depositor created a trust in favor of himself and his son during their joint lives and that, upon the death of one, the balance then on deposit should go to the survivor. It was here held that the bank was the trustee, although it did not appear that the bank had any idea of becoming a trustee when it accepted the deposit. It is difficult to understand upon what theory the court reached the conclusion that the bank was a trustee. This is the only case which we have found where the bank was held to become a trustee of a joint or alternate deposit. There is no more reason for holding the bank a trustee in the case of a deposit of this kind than in the ordinary case of a deposit in the name of the depositor individually.<sup>75</sup>

72. *Taylor v. Henry*, (1878), 48 Md. 550; *Bath Savings Institution v. Fogg*, (1906), 101 Me. 188, 63 Atl. Rep. 731.

73. *Pope v. Burlington Savings Bank*, (1884), 56 Vt. 584.

74. *Matter of King*, (1906), 51 Misc. Rep. (N. Y.) 375. 101 N. Y. Supp. 279.

## JOINT AND ALTERNATE DEPOSITS

As in the case of a deposit by one person in trust for another, a joint or alternate deposit will not operate, as a trust where it appears that the intention of the depositor was to retain ownership of the fund until his death and that the beneficiary was to take no interest until such time. In the case of *Providence Institution of Savings v. Carpenter*,<sup>76</sup> a deposit was opened in the names of "Margaret Hart or Mary F. Carpenter." The understanding was that the money was to remain the property of Margaret Hart during her life, subject to her own control, and at her death to be the property of Mary F. Carpenter, for the purpose of applying it to religious and charitable uses. It was held that, upon the death of Margaret Hart, the fund belonged to her administrator, and not to Mary F. Carpenter. There was no valid trust for the reason that no present interest passed to Mary F. Carpenter. The transaction was an ineffectual testamentary disposition and void because not executed in compliance with the statute of wills.

**§ 20. Estate in joint tenancy created by joint or alternate deposit.**—Joint tenants are defined to be persons who hold property, which they acquired by purchase at the same time, in virtue of the same title, interest and possession, and without anything to create a difference in their respective interests or possession.<sup>77</sup>

One of the incidents of an estate in joint tenancy is

75. *Carr v. Carr*, (Cal. 1911), 115 Pac. Rep. 261.

76. 18 R. I. 287, 27 Atl. Rep. 337, (1893). See also *Norway Savings Bank v. Merriam*, (1895), 88 Me. 146. Nor will such a deposit operate as a gift. See sections 11 and 28.

77. *Abbott's Law Dictionary*.



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survivorship. Where one of the joint tenants dies the entire estate belongs to the survivor or survivors, and the heirs of the deceased joint tenant do not take any interest or share in the estate.

Deposits in two names have occasionally been given effect as creating an estate in joint tenancy. In the case of *Mack v. Mechanics' and Farmers' Savings Bank*,<sup>78</sup> a depositor changed an account standing in his own name so as to stand in the names of himself and his mother, payable to the "order of either of them." The depositor showed the book to his mother and said, "This is yours." On the day before his death he sent the book to his mother, saying: "Tell my mother to keep it for me." It was held that the deposit constituted a gift of some kind to the mother and that the circumstances pointed to joint tenancy.

In a more recent case,<sup>79</sup> the evidence showed that a mother, having a savings bank account, transferred the account to the names of herself or her son. A short time prior to her death the depositor gave the pass book to her sister to keep for the son, with instructions that "if her son came back to give it to him." After the depositor's death the deposit was claimed by the temporary administrator of the son, whose whereabouts were unknown, and

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78. 50 Hun (N. Y.) 477, 3 N. Y. Supp. 441, (1883). In *Matter of Barefield*, (1904), 36 Misc. Rep. (N. Y.) 745, 74 N. Y. Supp. 472; *aff'd.*, 177 N. Y. 387, 69 N. E. Rep. 732, it was said: "The rule is well established that if one person deposits his own money in the joint names of himself and some other party, this indicates an intent to vest the title to the money in the survivor, and that the depositor remains the owner of the fund."

79. *Farrelly v. Emigrant Industrial Savings Bank*, (1904), 92 N. Y. App. Div. 529, 87 N. Y. Supp. Rep. 54.

## JOINT AND ALTERNATE DEPOSITS

by the administrator of the depositor. It was held that, taking into consideration the form of the deposit, the delivery of the pass book and the instructions to hold it for the son, there was an intent on the part of the depositor to vest in the son a joint ownership of the money, and that the survivor should be entitled to the whole.

In the opinion it was said " where the deposit is in joint names and the intent appears to create the joint tenancy, its effect is to vest title to the whole fund in the survivor, and under such circumstances, whether the book be delivered to the survivor or not, or whether he ever has had it in his possession during the lifetime of his joint owner, is not of great consequence, as the intent existing to create the relation of a joint tenancy, title vested in the survivor *eo instanti* upon the death of the joint owner, and no delivery of anything is necessary to effectuate such result. We think there can be little doubt in the present case but that the intent of the mother was to make her son joint owner with her in the fund, in consequence of which he took immediate title if he survived the mother." There was no evidence that the son was alive at the time of the mother's death and the temporary administrator of the son was held, therefore, not to be entitled to the deposit.

If the quotation above, from the opinion of the court, presents a correct statement of the law it must follow that, in New York, if a person deposits his money in the name of himself and some other person, in such terms that it appears to have been the depositor's intent to create an estate in joint tenancy, then upon the death of the depositor, the fund passes to the person named as

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co-owner, although the depositor retained possession of the pass book during his lifetime. This is not in accord with the decisions in other states, nor is it in harmony with the general principles of the law of gift. Where a person opens such an account his apparent intent is to create a gift in favor of the person named as co-owner. It is elemental that there can be no gift without a delivery of the subject of the gift, or at least, of the means of obtaining the property intended to be given. The depositor, in such a case, might withdraw the money after depositing it and thus revoke the gift. In other words, by this means, he might make a gift, revocable at will, and which, in any event, would take effect only in the event of his death. This is violative of the statute of wills. These matters are discussed more at length elsewhere.<sup>80</sup>

It must be added that, under a New York statute, a deposit of this character would, to-day, create an estate in joint tenancy, even without the delivery of the pass book. But, under that statute, once the deposit is opened, and the estate in joint tenancy created, the depositor cannot revoke the gift or take it back. If he draws the money and uses it he is accountable to the donee as any other joint tenant of personal property would be.

The statute referred to was passed in 1907 and provides that when a deposit is made in a savings bank in the name of the depositor and another, in form to be paid to either or the survivor, the deposit and any additions by either shall become the property of both as joint tenants, and

80. See sections 11 and 28.

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may be paid to either during the lifetime of both, or to the survivor after the death of one, and the bank is released by such payment, except in case of a payment made after notice in writing not to pay. Similar provisions have been enacted in California and Michigan.<sup>81</sup>

While the possibility of fixing a bank account so that two persons shall be joint owners during their mutual lives, and the survivor take all upon the death of one, is well established,<sup>82</sup> it is held in various decisions that the mere form of the account in such a case will not be regarded as sufficiently establishing the intent of the person making it to give the other a joint interest in the deposit. The test is whether the depositor intentionally created a condition embracing the essential characteristics of joint ownership and survivorship, irrespective of the formula used in doing it. In one decision it was written: "The question in this class of cases is whether it was the intention of the creator of the joint estate to give to his joint tenant the right of survivorship, or whether the title was so vested in him in trust for the creator. Where the creator stands in relation of parent towards the joint tenant, the usual presumption is that the arrangement and intention were that the parent was to have the sole use for his life, with the right of survivorship, and the child was to have the right of survivorship."<sup>83</sup>

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81. For the text of all statutes, see Appendix B.

82. *Kelly v. Beers*, (1909), 194 N. Y. 49, 86 N. E. Rep. 980.

83. *Skillman v. Wiegand*, (1896), 54 N. J. Eq. 198, 33 Atl. Rep. 929. The mere form of a deposit in two names, either to draw, does not establish an intent on the part of the depositor to give the other of the two a joint interest, with the right of survivorship. In *re Meyers' Estate*, (1911), 129 N. Y. Supp. 194.

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In *De Puy v. Stevens*,<sup>81</sup> a depositor, A, a woman advanced in years, gave B, a friend whom she was visiting, a check payable to new account or bearer, for the entire balance of the account. B informed the treasurer of the bank that A was in poor health and wished to have the account so arranged that money could be withdrawn without compelling her to sign checks. The account was accordingly changed to "A or B, either or survivor to draw." It was held that the evidence did not disclose an intent to create a joint tenancy and, therefore, that no joint tenancy was created.

§ 21. **Gift through medium of joint or alternate deposit.**—In many cases, where a person deposits his money in his name and that of some other person, or causes his individual account to be changed so as to stand in two names, he is deemed to have made a gift of the deposit. In this regard it is customary to refer to the depositor as having "money in the bank." The expression is figurative. There is, in fact, no "money" of the depositor "in the bank," and the depositor has no title to any fund in the bank. When the depositor places his money with the bank he parts with it absolutely in every instance, and in its place he accepts the contract of the bank to pay him either an amount of money from time to time equal to that which he has paid the bank, or a greater amount, according to the terms of the contract of deposit. In short the bank is the depositor's debtor. These are very simple and obvious facts, but a perusal of many of the bank deposit cases indicates

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84. 37 N. Y. App. Div. 289, 55 N. Y. Supp. 810, (1899).

## JOINT AND ALTERNATE DEPOSITS

that they are not infrequently overlooked, even by the courts.<sup>85</sup>

**§ 22. Definition and essentials of a valid gift.**—A gift is defined as a voluntary and gratuitous transfer of a thing. The term is usually applied to voluntary transfers of personal property. A gift is a contract, but differs from the ordinary contract in that the gift is made without consideration, that is, it is made gratuitously. In general a contract is not binding unless supported by a consideration. A gift, as the name implies, is made without consideration. If a man promises to transfer certain shares of stock to another gratuitously, he cannot be held to his promise for the reason that the promise is supported by no consideration. The promise cannot operate as a gift for the reason that a gift cannot be made to take effect at a future time. But, if the owner of the stock delivers it into the possession of the donee, with the intent of transferring title to him, there is a valid gift, and the fact that the transfer is gratuitous, or without consideration, is immaterial. The donee gets a good title to the stock and the donor cannot afterwards take it back.

The gift to be valid, must be completely executed. If anything remains to be done to complete the gift, what is undone cannot be enforced, it being without consideration. If not completed during the lifetime of the donor, his death revokes the part which has been performed.

Delivery of the property, which is the subject of the gift, with the intent to give, is absolutely necessary to

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85. *Dunn v. Houghton*, (N. J. 1902), 51 Atl. Rep. 71.

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the validity of the gift. The owner must part with his dominion and control of the thing before the gift can take effect. The circumstances must show that a present gift is intended. A gift, which is to take effect at a future time is void. The delivery, however, need not be simultaneous with the words of gift, but may precede or follow them. Where reasonably convenient there should be a physical delivery of the subject of the gift. But this is not always essential. In the case of bulky articles it is sufficient if the donor relinquishes possession to the donee.

In some cases delivery, sufficient to establish a valid gift, may be made by delivering the means of obtaining the property, as by delivering the key to a room or a trunk, containing the property to be given. This is known as constructive or symbolical delivery. The delivery of a savings bank book, standing in the name of the donor, is sufficient to constitute a gift, where the donor so intends. These are the general principles of the law of gifts and they apply with the same force to deposits in two names as to gifts in any other form.

Thus far we have been referring to gifts *inter vivos*, the usual form of gift. Gifts *causa mortis* are mentioned in many of the bank deposit cases and should be taken up briefly here. A gift *causa mortis* is defined to be a gift of personal property, made by a person in expectation of death, then imminent. Such a gift, however, takes effect only in case of the donor's death and it may be revoked by the donor at any time before his death. In this respect gifts of this class differ from gifts *inter vivos* and constitute an exception to the general rule that a gift cannot be made to take effect in the future. They re-

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semble gifts *inter vivos* in that there must be a delivery to make the gift effective. The rules respecting delivery, which apply to gifts *inter vivos* and which have been stated above, apply here.

§ 23. **Intent of depositor governs.**—When a person deposits his money in two names, the question of whether or not a gift has been made depends upon the intent of the depositor. If the depositor did not intend to part with title to the money, and this can be shown, then it must follow that no gift was made and the ownership of the fund remains in the depositor. Where it appears that the depositor did not intend a gift, there can be no gift, no matter in what terms the account was opened. The case of *Gorman v. Gorman*<sup>86</sup> is a good illustration. An account was opened in the Savings Bank of Baltimore in the names of "Theresa McConnell and Maggie S. Gorman, joint owners, payable to the order of either or the survivor." The money belonged to Theresa McConnell, who was an aunt of Maggie S. Gorman. Before her death the aunt made a will disposing of the fund. At the time when the account was opened one of the officials of the bank notified the aunt that, in case of the death of one of the parties, the other could get the money. When they were leaving the bank the aunt remarked to the niece: "Wasn't that a funny remark the clerk made, saying that you could draw the money. I don't see how you can draw it while I have the book." The aunt retained possession of the book until her death. There were other facts indicating that the aunt did not intend to make the

86. 87 Md. 338, 39 Atl. Rep. 1038, (1898).



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niece a gift of the deposit. It was held that, in spite of the use of the words "joint owners" and "survivor," there was no perfected gift in favor of the niece for the reason that there was no intent on the part of the aunt to make a gift.

A gift is not to be presumed from the mere form of the deposit. The evidence must show that the donor intended to divest himself of the deposit, and it should be inconsistent with any other intention or purpose. In the absence of other proof it will be presumed that a deposit in two names is nothing more than an arrangement for the convenience of the depositor.<sup>87</sup>

On the other hand, where the circumstances indicate that one, depositing money in two names did intend to make a gift, such intent will be recognized.<sup>88</sup>

**§ 24. Joint or alternate deposit as a matter of convenience.**—Occasionally a deposit is opened in two names as a measure of convenience in drawing money from the bank. When this appears to have been the depositor's object in opening the account there is, of

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87. *Matter of Bolin*, (1892), 136 N. Y. 177, 32 N. E. Rep. 626, where it was said: "In the absence of other evidence, the transaction simply evidence a purpose of the depositor of the moneys that they should be drawn out by either of the persons named. The only presumption would be that the depositor so arranged for the purposes of convenience." See *infra*, section 24.

88. *Kelly v. Beers*, (1909), 194 N. Y. 49, 86 N. E. Rep. 980, where the deposit was entered "In account with Kate v. Beers, or Sarah E. Kelly, her daughter, or the survivor of them." It was held that, while the mere form of the deposit would not establish a gift, the form in which the deposit was made, in connection with other evidence of an intent to give, was sufficient to show a gift. See also *Dennin v. Hilton*. (N. J. 1901), 50 Atl. Rep. 600.

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course, no gift, for the object is inconsistent with the existence of a gift and clearly indicates that the intent to make a gift is lacking.<sup>89</sup>

In the case of *Taylor v. Henry*<sup>90</sup> one Joseph Henry, being about to depart upon a voyage for his health, opened an account in the names of himself and his sister, as follows: "Joseph Henry, Margaret Taylor, and the survivor of them, subject to the order of either." After his death Margaret obtained the book from his trunk, where it had been kept, and drew the money from the bank. Joseph Henry had made a will in which he made legacies amounting to \$1300.00 and the only property against which the will could operate was the deposit standing in the name of the testator and his sister. It was held that the effect of the deposit depended upon the intent of the depositor, as gathered from the form of the deposit and all the surrounding circumstances. The court came to the conclusion that the deposit was nothing more than a device to subserve the convenience to the depositor, and that the sister was simply constituted an agent with power to draw the money from the bank to meet an emergency in case one should arise during his absence from home.

**§ 25. Joint or alternate deposit for purpose of increasing amount on deposit.**—In a Massachusetts case it was found that the object of the depositor in opening a

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89. *Taylor v. Henry*, (1878), 48 Md. 550; *Matter of Bolin*, (1892), 136 N. Y. 177, 32 N. E. Rep. 636; *Taylor v. Coriell*, (1904), 66 N. J. Eq. 262, 57 Atl. Rep. 810; *Skillman v. Wiegand*, (1896), 54 N. J. Eq. 198, 33 Atl. Rep. 929.

90. 48 Md. 550, (1878). See also *Wood v. Zornstorff*, (1901), 59 N. Y. App. Div. 538, 69 N. Y. Supp. 241.

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joint account was to increase the amount which she might be permitted to deposit in the bank. The deposit was made in the following terms: "Margaret McCormick and Ellen Dockery, payable to either or the survivor." At the time the account was opened it appeared that Margaret McCormick, the depositor had on deposit in the bank all that any one individual was allowed to deposit. It was held that the depositor never intended any gift to Ellen Dockery and that, therefore, there was no gift.<sup>91</sup>

§ 26. **Necessity of delivery to complete gift.**—No matter what language may be inscribed in the books of the bank, or upon the pass book, in opening an account in two names, the transaction cannot constitute a gift unless there be a delivery. To make such a gift perfect and complete there must be an actual transfer of all right and dominion over the thing given, and an acceptance by the donee, or some person competent to act for him. If the depositor retains the right to draw and use the fund there is no delivery and there is, therefore, no gift.<sup>92</sup>

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91. *Cogswell v. Newburyport Inst. for Savings*, (1896), 165 Mass. 524, 43 N. E. Rep. 296.

92. *Norway Savings Bank v. Merriam*, (1895), 88 Me. 146, 33 Atl. Rep. 840; *Augusta Savings Bank v. Fogg*, (1890), 88 Me. 538, 20 Atl. Rep. 92; *Taylor v. Henry*, (1878), 48 Md. 550; *Gorman v. Gorman*, (1898), 87 Md. 338, 39 Atl. Rep. 1038; *Whalen v. Milholland*, (1899), 89 Md. 199, 43 Atl. Rep. 45; *Noyes v. Institution for Savings*, (1895), 164 Mass. 583, 42 N. E. Rep. 103; *Matter of Bolin*, (1892), 136 N. Y. 177, 32 N. E. Rep. 626; *Schwind v. Ibert*, (1901), 60 N. Y. App. Div. 378, 69 N. Y. Supp. 921; *Flanagan v. Nash*, (1898), 185 Pa. 41, 39 Atl. Rep. 818; *Woonsocket Inst. v. Heffernan*, (1897), 20 R. I. 308, 38 Atl. Rep. 949; *Pope v. Burlington Bank*, (1884), 56 Vt. 584.

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An account was opened in the following terms: "Elizabeth O'Neill and Mary Whalen; payable to the order of either or the survivor." The account was opened by Elizabeth O'Neill and she retained possession of the bank book until her death. After the account was opened the words "joint owners" were added after the name of Mary Whalen by the bank, the bank having adopted that form for its joint accounts. It was held that the form of the account did not operate to establish a gift in favor of Mary Whalen, in the absence of delivery to her. Nor did the words "joint owners," even if added with the consent of the depositor, have that effect. A delivery of the pass book, with the intent to make a gift, was requisite to the consummation of a perfect gift, and without such delivery the donee could claim no interest in the deposit.<sup>93</sup>

In a similar case, arising in Pennsylvania, it appeared that one Bridget Gallagher opened an account in the Beneficial Savings Fund Society of Philadelphia in the joint names of herself and James Nash. On the margin opposite the signatures the words "either to draw" were entered by the treasurer of the association. A book was given to the depositor with the following words stamped upon it: "Either party to draw, and in the case of the death of either of them, the survivor shall have full power to withdraw the deposit as if the same had been duly transferred to such survivor." After the death of the depositor, Nash drew out the balance on deposit. It was held that the estate of the depositor could compel him to refund the amount drawn. There was no gift for the reason that there had been no delivery. The de-

93. *Whalen v. Milholland*, (1899), 89 Md. 199, 43 Atl. Rep. 45.

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positor retained the right to draw the money up to the time of her death and title thereto always remained in her.<sup>94</sup>

Even in a case where the account is opened in the names of two persons, "or their survivor in joint tenancy," it is held that there is no valid gift for the reason that the depositor retained the pass book during her lifetime.<sup>95</sup>

Where there has been a delivery of the pass book, representing an account in two names, by the person opening the account to the person named as co-owner, with the intent to make a gift, it is held that the gift is complete and valid.<sup>96</sup>

In some instances, however, the court seems to have found that a gift was made, although there was no delivery to the donee. In one such case the depositor opened a savings bank account in the names of herself and her niece, payable "to either or the survivor of either" At the time of opening the account she signed the following form provided by the bank:

" Oct. 7th, 1897.

" The Treasurer of the Albany County Savings Bank will please add the name of my niece, Huldah B. Hallenbeck, as owner and creditor with me of all moneys heretofore or which may hereafter be deposited in said bank under its account No. 12413, together with all the interest which has been or may hereafter be credited to the said account, with full

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94. *Flannagan v. Nash*, (1898), 185 Pa. St. 41, 39 Atl. Rep. 818.

95. *Norway Savings Bank v. Merriam*, (1895), 88 Me. 146, 33 Atl. Rep. 840.

96. *Dennin v. Hilton*, (N. J. 1901), 50 Atl. Rep. 600.

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authority for each or either of us, or the survivor of us, to draw out from the said bank the whole or any part of such moneys or such interest.

“ (Signed) HULDAH VAN AERMAN.”

It was here held that the form of the deposit gave the niece *prima facie* title, and that, before this could be destroyed, there would have to be a finding that the change in the account was made for some purpose other than to pass title, as, for example, for the convenience of the original depositor in drawing.<sup>97</sup>

In New Jersey it has been held that where a person deposited money in two names, nothing further was required to complete the gift, although the depositor retained possession of the pass book.<sup>98</sup>

In a Connecticut case it was said that, where a joint deposit is made with the intent of vesting a joint interest in the joint depositor immediately, the gift will not fail because the depositor retains possession of the pass book. In such a case the possession of the depositor is regarded by the court as the possession of one joint owner for both.<sup>99</sup>

### § 27. **Delivery must be made during lifetime of donor.**

—While delivery of the pass book, to effectuate a gift of the deposit represented by the book, need not be made directly to the donee, but may be made to some other

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97. *Hallenbeck v. Hallenbeck*, (1905), 103 N. Y. App. Div. 107, 93 N. Y. Supp. 73.

98. *Dunn v. Houghton*, (N. J. 1902), 51 Atl. Rep. 71.

99. *Main's Appeal*, (1901), 73 Conn. 638, 48 Atl. Rep. 965.

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person for him, a complete delivery must be made during the life time of the donor. If A deposits money in the joint names of himself and B, and delivers the pass book to C, saying: "This is B's; I want you to see that he gets it," there would be a complete and irrevocable gift. If A delivered the book to C, with instructions not to deliver it to B until after A's death, there would be a valid gift, provided A intended the gift to take effect at the time of the delivery, and merely wished to postpone the time when B should come into complete possession and enjoyment of the gift. But A would create no gift at all if he delivered the book to C, to be given to B only in case he survived A, and in such manner that he could at any time request its return from C.

In a case arising in Maine it appeared that one Hodgkins deposited various sums of money in the names of "Dorothy J. Dearborn and Amos C. Hodgkins." A few days before his death he sent for the executor of his will and told him that he had a savings bank book for his sister, Mrs. Dearborn. At that time he delivered to the executor a key to a trunk, which contained all his valuables, except the book in question. After Hodgkin's death the executor found the book and delivered it to Mrs. Dearborn. It was held that there was no gift in favor of Mrs. Dearborn. The depositor intended a gift; but his intent was that it should take effect after his death.<sup>100</sup>

Where the depositor of money in his name, coupled with that of another person, "payable to either or the survivor," sent word to the other to come and get the pass

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100. *Augusta Savings Bank v. Fogg*, (1890), 82 Me. 538, 20 Atl. Rep. 92.

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book, but the depositor died before the intended donee got the book, it was held that there was no gift.<sup>101</sup>

### § 28. Gift to become effective upon donor's death.—

In a very large number of instances of the opening of joint or alternate accounts the depositor's object is to arrange his bank deposit so that, upon his death it will pass to the person whom he designates. Thus a depositor will request that his account be changed so as to stand in the names of himself and his son, "payable to either or the survivor." The bank account may be the only property of which he is possessed, and he does not wish to see a great part of it used up in paying the expenses of administration after his death. In the meantime, however, he does not intend to lose control of the deposit. He retains the pass book so that the son cannot draw out any money, and he also retains the right to alter the account at any time by changing the beneficiary, or even by having the money retransferred to his own name. This virtually amounts to the making of a gift, revocable at any time, and, in any event, to take effect only in case of his death. A gift of this kind would violate the statute of wills and would not be valid. It has already been shown that such a gift cannot be made through the medium of a deposit in trust for the intended beneficiary, and it is no more possible to do so by means of a joint or alternate deposit. A gift may undoubtedly be made by a deposit in a joint or alternate account, but, to be valid, it must take effect completely during the lifetime of the donor.

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101. *Woonsocket Institution for Savings v. Heffernan*, (1897), 20 R. I. 308, 38 Atl. Rep. 949.



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This rule has been followed in a number of savings bank cases.<sup>102</sup>

In *Schippers v. Kempkes*,<sup>103</sup> where the account was entitled "R. Herman or Elizabeth Kempkes," it was said: "Such attempted gifts, *donatio causa mortis*, are not valid, but are clearly void under the decisions; not, of course, because of the lack of a donative purpose, but because the intent or direction is testamentary in its character, and not made in the manner prescribed in the statute of wills."

A striking example of an attempted testamentary disposition which failed is the case of *Main's Appeal*, decided in Connecticut in 1901.<sup>104</sup> It there appeared that the depositor wished that her money would go to her three daughters after her death. The bank officials told her representative that, while the entries could not be made in the specific language requested by the depositor, the opening of joint accounts would operate to pass the money to the daughters upon the depositor's death. Accordingly three accounts were opened, each one in the name of the depositor and one of the three daughters. When the daughters claimed the money after the death

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102. *Main's Appeal*, (1901), 73 Conn. 638, 48 Atl. Rep. 965; *Norway Savings Bank v. Merriam*, (1895), 88 Me. 146, 33 Atl. Rep. 840; *Bath Savings Institution v. Fogg*, (1906), 101 Me. 188, 63 Atl. Rep. 731; *Whalen v. Milholland*, (1899), 89 Md. 199, 43 Atl. Rep. 45; *Taylor v. Henry*, (1878), 48 Md. 550; *Smith v. Speer*, (1881) 34 N. J. Eq. 336; *Schippers v. Kempkes*, (N. J., 1907), 67 Atl. Rep. 74, *aff'd.*, 72 N. J. Eq. 948, 73 Atl. Rep. 1118; *Providence Institution for Savings v. Carpenter*, (1893), 18 R. I. 287, 27 Atl. Rep. 337.

103. 67 Atl. Rep. 74, (N. J. 1907), *aff'd.*, 72 N. J. Eq. 948, 73 Atl. Rep. 1118.

104. 73 Conn. 638, 48 Atl. Rep. 965.

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of the depositor it was held that no valid gifts had been made. The transaction was an attempted testamentary disposition and was invalid because not made in the form of a will. The court pointed out that the depositor "intended that the deposit should be made in such a way that the daughters would take no interest until their mother's death. That this was the purpose of the transfer was understood by all the parties including the bank officers, and it does not appear that the daughters themselves supposed that it was made for a different purpose. \* \* \* It was an attempted testamentary disposition of the money and was void because not made in legal form."

There are decisions to be found wherein it has been held that a gift dependent upon the life of the donor is valid.<sup>105</sup>

**§ 29. Joint and alternate accounts wherein parties are husband and wife.**—For the most part the rules which determine the validity of a gift of a bank deposit apply where the parties interested are husband and wife, but where this relation is found to exist the requirements are in some instances modified.

If a deposit is made without the intent of creating a gift it is held that there is no gift. Thus, where a husband deposits money in the names of himself and his wife, "either to draw," not intending to make a gift of the deposit to the wife, and she obtains the pass book without his consent, there is no gift and the wife gains no

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105. See the cases of *Blanchard v. Sheldon*, (1871), 43 Vt. 512, and *Dunn. v. Houghton*, (N. J., 1902), 51 Atl. Rep. 71.

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interest in the fund.<sup>106</sup> And where it appeared that a husband opened an account in the names of himself and his wife, payable "to either or the survivor of either," for the purpose of enabling the wife to draw from the account in case of sickness or necessity, and to vest her with title in case of his death, it was held that there was no valid gift.<sup>107</sup>

It is held that a gift of a joint deposit in the names of husband and wife is not complete unless there is a delivery and a parting with dominion over the property.<sup>108</sup>

In one case the depositor, upon opening an account in the Rochester Savings Bank, stated that "he wanted it so that either he or his wife could draw the money. The account was opened in their two names, "to be drawn by either." The depositor took the pass book and, after his death, the wife obtained it and drew the money. It was held that she was not entitled to retain it as against the depositor's administrator. Though the depositor intended that his wife should have the money at his death he had misjudged what was necessary to accomplish this result. The transaction was not valid as a gift for the reason that it had not been consummated by delivery. All that the wife received was an authority to draw the money which terminated at the death of the husband.<sup>109</sup>

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106. *Slee v. Kings County Savings Institution*, (1903), 78 N. Y. App. Div. 534, 79 N. Y. Supp. 630.

107. *Schneider v. Schneider*, (1907), 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792.

108. *Schick v. Grote*, (1886), 42 N. J. Eq. 352, 7 Atl. Rep. 852; *Dougherty v. Moore*, (1889), 71 Md. 248, 18 Atl. Rep. 35.

109. *Brown v. Brown*, (1857), 23 Barb. (N. Y.) 565. See also *Matter of Ward*, (N. Y., 1876), 51 How. Pr. Rep. 316; *Burns v.*

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The opposite view is also taken and it is held that a deposit by a husband in the names of himself and his wife imports a gift to her and vests title in her though the pass book is not delivered to her. In a New York case it was said: "I think it is within the authorities to say that where a husband deposits his money in a savings bank in his name and that of his wife with the account 'payable to either or the survivor,' as was the case here, the account on its face imports a gift to her and that she has such an interest in it as gives her the equal right with him to draw it during their joint lives and vests her with its absolute title in case she survives him."<sup>110</sup>

It has been held that a husband cannot make a gift of a deposit in favor of his wife, which is to take effect only upon the death of the husband. One of the depositors in the Pennsylvania Railroad Employees' Savings Fund, in opening his account, requested "that in the event of my death all deposits standing to my credit in said savings fund, and all interest thereon, shall be paid to my wife." He delivered the pass book to his wife and explained how she could get the money in case of his death. It was held that she was not entitled to the money on his death. There was no valid gift because he had retained dominion and control of the deposit and the intended gift was to take

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Burns, (1903), 132 Mich. 441, 93 N. W. Rep. 1077; Denigan v. Hibernia Savings & Loan Society, (1899), 127 Cal. 137, 59 Pac. Rep. 389; Denigan v. San Francisco Savings Union, (1899), 127 Cal. 142, 59 Pac. Rep. 390.

110. Moore v. Fingar, (1909), 131 N. Y. App. Div. 399, 115 N. Y. Supp. 1035. See also Platt v. Grubb, (1896), 41 Hun (N. Y.) 477; McElroy v. National Savings Bank, (1896), 8 N. Y. App. Div. 192, 40 N. Y. Supp. 340; Estate of Griffiths, (Pa., 1895), 1 Lack. Leg. N. 311.

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effect only upon his death. In the opinion it was said that to hold such a method of disposing of property valid would be to practically repeal the statute of wills in its operation upon personal property, so far as its mandatory provisions are concerned.<sup>111</sup>

This, also, has been decided otherwise and in a New York case it was held that a deposit by a husband in the names of himself and his wife, in the absence of a contrary intention, creates a right of survivorship in the wife, although the husband retains the bank book and makes withdrawals.<sup>112</sup>

In this case the fact that the pass-book had never been delivered to the wife was one of the grounds upon which the appellants, who represented the estate of the deceased husband, claimed that there had been no gift to the wife. In a carefully prepared brief, filed in this case on behalf of the appellants, which was written by Mr. Frank A. Gaynor, a member of the New York bar, it was pointed out that by virtue of the modern statutes, sweeping away the disabilities of married women, which existed at common law, husband and wife now deal as strangers with each other with reference to personal property. It was urged, therefore, that a gift of a savings bank account from husband to wife is not complete without a delivery, such as is required where the parties are not joined by the ties of marriage. The point seems well taken.

Even admitting that a deposit by a husband, in the names of himself and his wife, raises a presumption that

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111. *Stevenson v. Earl*, (1903), 65 N. J. Eq. 721, 55 Alt. Rep. 1091.

112. *West v. McCullough*, (1908), 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493; *aff'd.*, 194 N. Y. 518, 87 N. E. Rep. 1130.

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he intended a gift to the wife, there seems to be no sound basis for holding that such a gift is complete without delivery. The law requires a delivery in other cases and a gift is not declared to exist in the absence of delivery, although it positively appears that the donor intended a gift. The rule should be the same where the parties are husband and wife.

Where a husband, in making a deposit in the names of himself and his wife, so intends, an estate by the entirety may be created, entitled the wife to the entire deposit upon the death of the husband. In one such instance it appeared that the money belonged to, and was deposited by the husband in an account entitled "William E. and Julia A. Bradley." The husband died, and the wife some time later. The administrator of the husband and the administrator of the wife opposed each other in claiming the deposit. The wife's administrator claimed that the deposit created an estate by the entirety and that it passed to the wife as the survivor. The husband's administrator claimed that estates by the entirety had been abolished, in effect, by the enactment of the married women's statutes which, in a property sense, disunite husband and wife. But the court held that estates by the entirety still exist in Missouri, as at common law.

As to the nature of an estate by the entirety, it is an interest in property owned jointly by a husband and wife, which on the death of one, passes to the survivor. Estates of this character are not recognized in all of the states. Where it does exist a conveyance to a husband and wife creates an estate in entirety. But in some states such

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an estate is not created unless expressly stated in the instrument.

In the present case it was held that whether the deposit by the husband created an estate by the entirety depended upon the intention of the depositor. The mere opening of the deposit, it was said, was not conclusive, but had a favorable bearing on the question in the wife's favor. It was held that the circumstances justified the presumption that the husband, in making the deposit, intended that his wife, if she survived him, should have the entire deposit. The administrator of the wife was accordingly adjudged entitled as against the husband's administrator.<sup>113</sup>

**§ 29. Right of bank to pay joint and alternate deposits.**—During the life time of both parties to a joint or alternate deposit, the bank may pay either party in accordance with the rules of the bank, unless there is different stipulation in the contract of deposit. And where the deposit is in such form that the survivor is entitled to the deposit the bank may pay the survivor. But, if the bank pays after notice by one of the parties, or some one representing one of the parties, not to pay, it pays at its own risk and if the bank in such case pays a party not legally entitled, it may be compelled to pay over again at the instance of one properly entitled.<sup>114</sup>

However, the fact that a bank is protected in paying in

113. *Craig v. Bradley*, (Mo., 1911), 134 S. W. Rep. 1081. See also *Parry's Estate*, (1898), 188 Pa. St. 33, 41 Atl. Rep. 448.

114. *Metropolitan Savings Bank v. Murphy*, (1896); 82 Md. 314, 33 Atl. Rep. 640; *Mulcahy v. Devlin*, (N. Y. 1886), 2 City Ct. Rep. 218; *Whitlock v. Bowery Savings Bank*, N. Y. Daily Reg., Nov. 22, 1883; *Graffing v. Irving Savings Institution*, (1902), 69 N. Y. App. Div. 566, 75 N. Y. Supp. 48.

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good faith, under the circumstances stated, does not mean that the party so paid is necessarily entitled to retain the money. His rights depend upon the rules governing these deposits already set forth.

In a number of states there are statutes, the general purport of which is that a bank may pay a deposit, standing in two names, to either person, whether the other be living or not.<sup>115</sup>

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115. For the text of all statutes, see Appendix B.



## APPENDIX A.

### DECISIONS.

Arranged alphabetically with reference to jurisdictions.

#### ALABAMA.

##### A IN TRUST FOR B.

Sayre v. Weil, (1891), 94 Ala. 466, 10 So. Rep. 546.

*A deposit by A in trust for B, intending the deposit as a gift to B creates an irrevocable trust. Rights of bank discussed.*

An account was opened with a bank, entitled "D. Weil, trustee for the Goldman children," the same being the grandchildren of the depositor. He testified: "I put it there as a gift to them every week so that when they grew up they would have something to fall back on." He subsequently directed the bank to apply to the deposit to the payment of a note of his which the bank held.

As to the rights of the parties the Court said: "Under all the authorities we hold that the trust was completed and irrevocable, and that nothing remained in the trustee but a mere naked legal title. We hold the law to be, that a deposit is a matter of contract between the depositor and the bank. \* \* \* We further hold that if D. Weil as trustee had drawn against this fund in his trust character, Moses Brothers (bankers) were under no legal duty to inquire into the purposes intended, or the use to be made by the trustee of the money; and if his drafts were paid in ignorance of any improper use intended by the trustee, they would not be responsible; that payment of such drafts would be in due course of banking business

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and would discharge them from liability. When, however D. Weil proposed to apply this trust money in satisfaction of his own individual indebtedness, Moses Bros. knew that the funds were trust funds, and that the proposition amounted to a violation of his trust. Such an agreement cannot be upheld against the *cestui que trust* (beneficiary). The *cestui que trust* may afterwards ratify such unauthorized application of the trust fund, and hold Weil responsible, or they may repudiate the payment *in toto* and hold Moses Bros. as their debtors."

## ARKANSAS.

### DEPOSIT IN A'S NAME.

Smithwick v. Bank of Corning, (Ark. 1910), 130 S. W. Rep. 166.

Frequent declarations by a depositor that money on deposit in his name belongs to another will not convert the deposit into a trust fund. The mere intention, without acts, will not create a trust. And the party in whose favor such declarations are made, cannot recover the deposit from the bank.

## CALIFORNIA.

### A OR B.

Denigan v. Hibernia Savings & Loan Society, (1899), 127 Cal. 137, 59 Pac. Rep. 389.

*A deposit by a wife of her money in an account, payable to herself or her husband, does not, standing alone, constitute a valid gift.*

Ellen Denigan deposited \$1,700, her own money, in the Hibernia Savings & Loan Society and received a pass book entitled "Frank Denigan or Ellen Denigan in account with the Hibernia Savings & Loan Society". Later \$1,300 more was deposited. Upon Ellen's death

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the husband caused the money to be transferred to a new account entitled "Francis Denigan or James Denigan," James being a nephew of Francis. Later Francis gave an order for \$1,000 to one Connelly. Francis died the next day and the \$1,000 was paid to Connelly after his death. James, the nephew, presented the pass book and demanded the entire deposit including the \$1,000 paid to Connelly. The administrator of Francis and the administrator of Ellen also claimed the fund. It was held that the administrator of Ellen was entitled to the money. There had never been any valid gift to Francis and consequently neither he nor James had any claim. It was not shown that Francis ever had possession of the bank book until after Ellen's death. "The form in which the deposit was made was equally consistent with a desire on the part of the wife to give to her husband authority to withdraw money from the bank from time to time as she might need it."

### A AND B, PAYABLE TO EITHER.

*Denigan v. San Francisco Savings Union*, (1899), 127 Cal. 142, 59 Pac. Rep. 390.

*A deposit by a married woman of her money in the names of herself and her husband, payable to the order of either of them, does not, standing alone, give the husband such a joint interest in the deposit as to entitle him to claim it against the wife's executor.*

Upon the death of one Ellen Denigan there was a deposit in the San Francisco Savings Union in the names of herself and her husband, payable to either of them. The account originated in a single deposit of \$3,000 belonging to the wife. After the wife's death, Francis Denigan the husband caused the sum of \$1,400 to be transferred to an account entitled "Frank Denigan or James Denigan." After Frank's death James brought this action against the bank. The bank paid the money into

## DECISIONS

court and the administrator of Frank Denigan was substituted as defendant. It was held that as the money belonged to the separate estate of Ellen Denigan at the time of the original deposit and as there was no evidence showing an intent on her part to part with title to the money, it remained her separate property at the time of her death, notwithstanding the form of the deposit.

The court said: "Title by survivorship exists only when the estate is held in joint ownership, and, unless the deposit was owned by Francis in the lifetime of Ellen jointly with her, there was no joint interest therein to which the incident of survivorship could attach. We have seen that she did not part with her title to the deposit by reason of the form in which it was made, and, as the title of Francis depends entirely thereon, it is evident that he had no joint interest with her in the moneys so deposited. \* \* \* While the bank would have been authorized to pay all or any portion of it to him (Francis) in her lifetime he could have been compelled to account to her for what he might thus receive."

### A, PAY TO A, B OR C.

Booth v. Oakland Bank of Savings, (1898), 122 Cal. 19, 54 Pac. Rep. 370.

A, who had a savings bank account, signed the following paper: "To Oakland Bank of Savings, May 17, 1892, in re savings deposit 7041, in my name. Pay to the individual order of either B, or C, or myself. (Signed) A." A died still owning part of the deposit, and having retained the bank book with the knowledge of the bank. It was held that the transaction fell short of a gift, but that it was a trust in favor of B and C. It was unnecessary to show an acceptance. The action started by B and the administrator of C was a sufficient acceptance. Though revoked as to part of the deposit by subsequent withdrawals, the trust remained effective as to the balance.

## BANK DEPOSITS

### CONNECTICUT.

#### A TRUSTEE FOR B.

Minor v. Rogers, Executor, (1873), 40 Conn. 512.

*A deposited a sum of money in the name of "A trustee for B." B was a minor, and A intended, when she made the deposit, that it should be for the benefit of B, and a few days after, she informed B's father that she had put some money in the savings bank for B, and that he would need it for his education. A retained the pass book and afterwards drew out the money. In her will she disposed of all her estate and made no mention of B or of the deposit. B never knew of the deposit until after the death of A. In an action by B against the executor of the estate of A, he was given judgment for the deposit with interest.*

*Held: When A made the deposit in the form and with the intention stated, the beneficial interest immediately vested in B. A retained merely the bare, legal, title as trustee for B. The trust was complete when the money was deposited and A could not thereafter annul the transaction as she attempted to do.*

On March 30, 1861, Mary Daniels, a wealthy widow, living at Branford and having no children, went to New Haven with William A. Minor, a boy thirteen years of age, who resided with his parents, who were near neighbors and friendly to Mrs. Daniels, and after inquiring particularly about his middle name, left him in a store with directions to wait for her. She then visited the New Haven Savings Bank (where at the time and for a year or two after, she had no deposit except the one now to be mentioned) and deposited in the bank \$250, receiving the usual bank book made out to

"Mary Daniels as trustee of William A. Minor."

The semi-annual interest was afterwards added upon the book up to January 1863, and again up to January 1864.

## DECISIONS

On June 15, 1863, she drew out \$150 of the money and on the 18th of May 1864, she drew out \$130.15 the balance of principal and interest then due, signed a receipt in the book in her own name, without the addition of trustee, and then delivered up the book to the bank. The book up to that time had always been retained in her own possession. In her will she disposed of all her estate making no mention of William A. Minor, or of the deposit.

A few days after the deposit, she informed the father of William that she had deposited \$250 in the savings bank for Willie and on two other occasions during the same summer she alluded to the fact in conversation with Willie's parents, and that he would need it for his education.

William A. Minor knew nothing of the deposit until after the death of Mary Daniels which occurred in 1868, and no further allusion was made to it between her and his parents during her life. It did not appear for what purpose she drew the money out or what she did with it.

This suit was brought by William A. Minor against the executor of Mary Daniels to recover the money with interest.

The executor claimed that upon the facts there was no effective gift; that in law Mrs. Daniels had, notwithstanding the deposit, the right to revoke her intended bounty, and that by withdrawing the deposit in her own name, she must be deemed to have revoked it so that it never became effective.

Held: Mrs. Daniels deposited \$250 for the sole benefit of the plaintiff intending thereby to vest in plaintiff all the beneficial interest in the deposit. Within a few days after, she informed plaintiff's father of what she had done for the plaintiff, and remarked that he would need the donation to acquire an education. But she made the deposit in her own name as trustee for the plaintiff and kept the bank book in her possession, and this gives rise

## BANK DEPOSITS

to all the doubt there is in the case, namely, whether the gift was consummated or not.

It is evident that she did all that she thought was necessary to be done to perfect the gift and supposed that she had accomplished the object; and the only question is whether she was successful. If she had made the deposit in the name of the plaintiff alone, or had made some other person than herself trustee for the plaintiff, no question could have arisen regarding the completeness of the gift. But the beneficial interest is as much given as it would have been if either of these modes had been adopted. The deposit is made in bank for the plaintiff and the bank is informed of the fact. Here is a delivery of the beneficial interest. No more would have been done if the deposit had been made in the name of a third party for the plaintiff. The trustee in that case would have had nothing more than the bare, naked, legal title, without any beneficial interest whatsoever. That interest would have vested directly in the plaintiff. Can it be said that Mrs. Daniels retained in her possession anything more—anything but the naked, legal title, when all the beneficial interest had been as completely given and delivered to the plaintiff as it could have been if a third party had been made trustee? Suppose she had given the plaintiff a writing to this effect: "I, Mary Daniels, have this day deposited in the New Haven Savings Bank \$250, in my name as trustee for William A. Minor," would the case be stronger than it is now? She substantially so declared to the bank when she made the deposit, expecting they would make a record of it for the benefit of plaintiff, which they did make. She substantially so declared to the father and natural guardian of the plaintiff, a short time after, expecting, no doubt, that he would inform the plaintiff of what she had done for him.

It is true that a mere naked promise to give personal

## DECISIONS

property, or a declaration by a party without performing some act delivering or conveying the property to the donee, would not be sufficient. But here the donor took a sum of money and deposited it in a bank where she had no funds of her own, for the purpose of transferring all of the beneficial interest in the same to the plaintiff, and although she used her own name as trustee for the plaintiff, still the act had the same effect as depositing it in the plaintiff's name, in every respect except the legal title. Surely here are acts done for the purpose of transferring the beneficial interest in the chose in action to the plaintiff.

If the deposit had been made in the name of the donor alone, then it would have been necessary in order to perfect the gift, for her to have given the plaintiff a writing conveying the gift, or an assignment of the bank book in which the deposit was entered.

But here the conveyance was made of the chose in action at the time the deposit was made, and it so appears on the books of the bank, and in the donor's bank book, which entries she caused to be made at the time of the transaction

But the defendant relies very much upon the fact that Mrs. Daniels retained possession of the bank book. He considers this act of hers as wholly inconsistent with a perfected gift. But she could not act as trustee of the chose in action without retaining possession of the book, for it is well known that savings banks require the presentation of such books whenever any action on their part is asked for with regard to the deposits in the banks. She retained possession, therefore, because the deposit was made in her name as trustee, and not because she had not given the beneficial interest of the deposit to the plaintiff.

We think, therefore, that the gift of Mrs. Daniels to the plaintiff was complete when the money was deposited



## BANK DEPOSITS

in bank and that consequently she could not thereafter annul the transaction as she attempted to do.

The defendant further claims that her trust was void for uncertainty, because no time was specified when the plaintiff should enjoy the legal as well as the equitable right to the property. The donor stated that the plaintiff would need the donation for his education, thereby implying that it should be in his hands for that purpose when that time should arrive. At all events it cannot be considered that she intended the trusteeship to continue longer than during the minority of the plaintiff. We see no difficulty in this objection.

B: C. GUARDIAN.

Kerrigan v. Rautigan, (1875), 43 Conn. 17.

*A deposited a sum of money in the name of "B, C guardian," informing C that she had put the money in bank for B. A, however, kept the book and afterwards caused the money to be transferred back to her own name. Later she transferred the deposit to an account "B, A trustee." A always kept the bank book, until a few days before her death when she handed it to C, telling her that it was B's money; but at A's request, the bank book was again returned to her, and she had the account transferred to her own name; and then retransferred to "D, trustee," with directions to the latter to pay her debts, funeral expenses, and purchase a gravestone. A died, leaving no estate except the deposit. Thereafter "D, trustee" drew out the money, and paid most of it out for A's funeral expenses and debts.*

*Afterwards, B claiming that the deposit was given her, brought suit against D therefor.*

*Held: At the time of the first deposit, A intended to make a valid gift thereof to B, and the making of the deposit in the name of "B, C guardian," taking the book in the name of the donee, and notifying the guardian of the act, gave effect to that intention, made the gift complete, and placed*

## DECISIONS

*it beyond the power of A to revoke it. Hence the deposit belonged to B, and D trustee who withdrew the same and paid it away as directed by A, is liable for the amount to B, after deducting the sum of one debt which he paid, which existed before the gift to B, and with the payment of which the deposit in B's hands would be rightfully chargeable.*

On August 30, 1869, Elizabeth Williams, a sister of Margaret Kerrigan, and Aunt of Elizabeth Kerrigan, a minor, deposited in the Chelsea Savings Bank of Norwich, \$460, in the name and to the credit of

"Elizabeth Kerrigan—Margaret Kerrigan, guardian," and received the usual pass book. At the time she told Margaret that she had put the money in the bank for Elizabeth Kerrigan, but did not deliver the book either to Margaret or to Elizabeth Kerrigan.

On October 29, 1869, Elizabeth Williams drew from the bank \$10 of the money so deposited and caused the remainder to be transferred back to her by Margaret Kerrigan and took out a book for the same in her own name.

On September 20, 1870 she deposited \$37.75 in this account. From August 30, 1869 to November 2, 1870 interest on the deposits to the amount of \$26.25 accrued; but between those dates Elizabeth Williams drew out \$114 leaving a balance to her credit on November 2, 1870 of \$400 which was on that day, by her direction, placed to the credit of

"Elizabeth Kerrigan—Elizabeth Williams, trustee."

From November 2, 1870 to March 19, 1872 the account was not changed except by the credit of \$35.78 earnings and \$23.78 withdrawn by Elizabeth Williams. Elizabeth Williams never delivered to Margaret Kerrigan nor to Elizabeth Kerrigan the bank book taken out on August 30, 1869 and always held the book taken out November 2, 1870 until a few days before she died. She then placed it in the hands of Margaret, telling her to

## BANK DEPOSITS

take care of it and that it was Elizabeth Kerrigan's money. But at her request it was returned to her soon afterwards and she then, on March 19, 1872 transferred the balance of \$412 to herself and received from the bank a deposit book for that sum in her own name. On March 20, 1872 she drew out \$12 and on March 22, 1872 transferred the remainder, \$400 to "John Rautigan, trustee" and directed him to appropriate the money for the payment of her debts and funeral charges and for a gravestone. A few days afterwards she died leaving no estate unless the said sum of \$400 belonged to her.

Elizabeth Williams was illiterate being unable to read or write. Elizabeth Kerrigan had been named for her. At the time she made the first deposit on August 30, 1869 she intended to give the deposit to Elizabeth Kerrigan.

After her death, John Rautigan trustee, drew the \$400 from the bank and paid her funeral expenses amounting to \$122.75 and debts then outstanding against her amounting to \$204.06. This amount included an indebtedness to F. P. Rochford for \$91.75 which existed at the time the first deposit was made, at which time Elizabeth Williams had no property to pay this debt with except the money so deposited. The remaining indebtedness had been subsequently contracted.

After paying these debts and funeral expenses, Rautigan took out letters of administration upon the estate of Elizabeth Williams. Thereafter this suit was brought against him by Elizabeth Kerrigan to recover the sum of \$400 and judgment is awarded in her favor for \$308.30, being the amount drawn from the bank by Rautigan less the amount of the Rochford debt and the interest thereon from March 30, 1872.

Held: The intention on the part of Elizabeth Williams to make a valid and perfect gift to the plaintiff, her niece, on August 30, 1869 of the sum of \$460 is found by the court below; and as a matter of law, the deposit of that

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sum on that day in the savings bank in the name and to the credit of plaintiff under the guardianship of Margaret Kerrigan, the taking of the usual bank book for that deposit in the name of the donee, and the accompanying notice of the act to the guardian, gave effect to that intention, made the gift complete, and placed it beyond the power of revocation of the donor.

But the defendant denies the validity of the gift and asserts that the pecuniary condition of the donor at the time when it was made was such as to render it fraudulent and void against existing and subsequent creditors.

It is to be noted that no representative of a debt existing at the time of the gift is heard to call it in question. The debt to Rochford, the only one outstanding, has been paid from the money given to the plaintiff; it was in fact paid before the institution of this suit, and the judgment of the court below charges it upon this fund. In the absence of any fraudulent intent on the part of the donor, this payment from the money given is legally equivalent to a reservation in favor of the debt, and the transfer of the money to the plaintiff. Under these circumstances the bare fact of the existence of the debt at the date of the gift should not operate to nullify it for the sole benefit of subsequent creditors.

Although the donor reserved no money in hand when the gift was made, the court finds that she was in receipt of a pension of \$8.00 per month and of rent to the amount of \$3.00 per month; to which may be added the presumptive avails of her labor. Upon a reasonable presumption as to the continuance of these sources of income, in view of her manner of life, and in the absence of any intent to incur debts, we think she had a right to believe that in the future she could supply her wants and meet such demand as she had reason to foresee, and that her act does not furnish any legal presumption of an intent to defraud subsequent creditors.

## BANK DEPOSITS

### B; ORDER OF A.

Burton v. Bridgeport Savings Bank (1884), 52 Conn. 398.

*A had two deposit books in a savings bank, one in his own name; the other "B, order of A." On the last page of the book in his own name he had signed an order to the bank to pay "B—dolls, or what may be due on my deposit book;" and on the last page of the other book, a similar order reading "at my decease pay B" etc. A deposited and drew out money after he had signed these orders. The books were placed in an envelope indorsed "Deliver to B after my decease." B never possessed the books and had no knowledge of them until after the death of A, his father. In a suit by B against the bank for the deposits,*

*Held: The facts do not establish a valid gift by A to B during the lifetime of A. No intention is shown to make a present gift.*

Alden Burton in his lifetime deposited money in the Bridgeport Savings Bank evidenced by two deposit books, one (10,065) in the name of Alden Burton; the other, (21,541) in the name of

"James Burton, order of Alden Burton."

All the deposits credited in these books were made by Alden Burton from his own funds. He died February 26, 1879, leaving a widow and two sons. He left a will giving to the widow the use of one-third of his personal property during life and to the sons in substance the residue of the estate.

On the last page of book 10,065, the one standing in his own name under the words "an order" partly in print and partly in writing, is the following:

"Bridgeport, April 9, 1868.

Treasurer of Bridgeport Savings Bank.

Pay James Burton ..... dollars, or what may be due on my deposit book number .....

Alden Burton.

Witnessed by George Sterling."

## DECISIONS

Mr. Sterling was the secretary and treasurer of the savings bank at the time he witnessed the order. There were no additional deposits entered on the book after April 9, 1868, but there were sums of money from \$15 to \$1,500 drawn out after that date and prior to May 28, 1878, amounting to \$2,957.49.

The other book No. 21,541 standing in the name of James Burton order of Alden Burton, had on its last page, partly in print and partly in writing, the following order:

Bridgeport, August 12, 1871.

Treasurer Bridgeport Savings Bank. At my decease, pay James Burton ..... Dollars, or what may be due on my deposit book No. ....

Alden Burton.

Deposits were made and money drawn out after the date of this order which were entered on the book.

These books with others were placed in a large envelope and left at the banking house with the treasurer and Alden Burton had access to them whenever he pleased as long as he lived. This envelope had written on the face of it in the upper right hand corner these words: "Deliver this to James Burton after my decease with all the books;" but by whom, when or where they were written, did not appear, nor did it appear what the contents of the package were when written, other than as above stated. It was not in the handwriting of Alden Burton or of any one connected with the bank. For aught that appeared it might have been written many years ago.

James was the son of Alden, was named in the will as one of the executors, but never served, and when this suit was brought was subject to a conservator. He never had possession of the bank books and had no knowledge of them or that his name was connected with them during the lifetime of his father.

## BANK DEPOSITS

In this action by James Burton against the Bridgeport Savings Bank to recover the deposits evidenced by the two books, a judgment against the bank rendered by the Superior Court, is reversed by the Supreme Court of Errors.

Held: There was not a valid gift of the money deposited to the plaintiff during the lifetime of Alden Burton.

In Camp's Appeal, 36 Conn. 88, the donor gave to his nephew certain bank books, accompanied with declarations showing that he intended a present gift of the money deposited and represented by the books. It was claimed that inasmuch as there was no order for the payment of the money there was no delivery of the gift. This court held that the delivery of the books, thereby intending to give the money, vested in the nephew an equitable title to the money and regarded it as a completed gift.

This case is distinguishable from that in two particulars; here there was no delivery of the books to the plaintiff and there is no finding that Alden Burton intended a present gift. We are now asked not only to dispense with an order for the payment of the money, but also with a delivery of the books, and even an intention to make a present gift.

The case of Minor v. Rogers, 40 Conn. 512, is more like the present one. The donor, possessed of considerable property, deposited \$250 in his own name as trustee for the plaintiff, then a minor. She told the plaintiff's father that she had deposited it for the plaintiff and that he would need it in getting his education. And the court found that at the time she made the deposit she intended it as a gift to the plaintiff to take effect either then or at some future time. She subsequently drew out the money for her own use and died leaving a will by which she gave the plaintiff nothing. The court held that the money so deposited was a present executed gift.

In Kerrigan v. Rautigan, 43 Conn. 17, the donor

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made a deposit in the name of the donee, a minor, naming her mother as guardian. It was found that she then intended to make a gift of the money to the donee.

The distinction between the case at bar and the two cases last cited, consists not so much in the circumstances that in each of those cases the donee was a minor, while in this case he was of full age, as in the fact found that the donor in each case intended a present gift, no such intention being found in the present case. The circumstance that the donor in one case made the deposit subject to his control as trustee, and in the other she made it subject to the order of a third person as guardian, did not prevent the gift from taking effect presently, such being the intention of the donors. In this case we look in vain for any such intention on the part of Alden Burton. It is not found in express terms, and the facts stated, as matter of law do not show such intention.

The fact that a part of the deposits were made in the plaintiff's name affords the strongest evidence of an intention to make a gift; but that does not necessarily show an intention to make a present gift. It is equally consistent with an intention to have the gift take effect at some future time.

The direction in the envelope "deliver this to James Burton after my decease with all my books" is not of much weight. It is not certain by whom or for what purpose that was written. But if it is to be regarded as the language of Alden Burton, its meaning may be to deliver him as executor. So far as this direction is to be considered as the direction of the father and to refer to the books now in question, it clearly shows that the father did not intend that the books should be delivered to the son for any purpose until after his decease.

The absence of any declaration by the father to the son or otherwise that he intended to give the money to the son during his life, is significant, especially as there



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were two occasions, once when he went to the bank with the conservator, and once with the son, when we should naturally expect, if he intended to give the money then or previously deposited to his son to take effect immediately, that he would say so rather than use an indefinite, vague expression, that he was going to deposit money for him.

The fact, also, that one of the books was in his own name, that the other was at his absolute control, that he kept the books in his own possession and drew out and deposited money as he pleased and so long as he lived, is important.

But the circumstances which seem to be of controlling weight are the two orders which he signed, one in each of the books. He was a depositor in the bank for twenty years before his death, and was a corporate member and a trustee. As such he knew the regulations of the bank and what was required in order to effect a valid transfer of the money therein deposited. He had that subject in his mind and acted upon it so far as to sign the orders referred to. The one in the book standing in his own name, was payable to his son without limitation as to time, but it was never delivered. The one in the book standing in the name of "James Burton, order of Alden Burton" was in terms to pay at his decease. That order, too, was never delivered. For some reason, if he ever intended to give the money to his son, he never consummated the gift by vesting in him either the legal or equitable title.

The law will recognize and enforce gifts when they are clearly established if creditors are not thereby prejudiced; but claims of this character are so open to fraud, and so liable to be made, especially against the estates of deceased persons, when there is little foundation for them, that courts will not regard them with favor, and will not sustain them unless fully proved; in other words, there is no presumption in their favor.

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The court did not find in terms that there was a gift during the lifetime of A'den Burton, and the facts stated fail to establish one.

### B; ONLY A TO DRAW.

Buckingham's Appeal, (1891), 60 Conn. 143, 22 Atl. Rep. 509.

*A deposited money in the name of "B; only A has power to draw," declaring to the bank officer that she wanted the money to belong to B, but to be so fixed that B could not draw it out and spend it during A's life. A also informed B that she had given her the money. B wrote her name in the signature book. The bank book remained in A's possession until her death except it was shortly before her death, given into the temporary possession of B and then returned to A.*

*Held: A intended to and did make a valid gift of the deposit to B in her lifetime, and her subsequent control was as trustee for B.*

On October 15, 1884, Irene M. Clark had on deposit in the Connecticut Savings Bank of New Haven, \$5,871. On that day she went to the Savings Bank at New Haven and told the teller to write up her deposit book and expressed a desire that \$1,500 should be transferred from her account to each one of her three nieces. This was done, and three new accounts were opened in their names for her nieces Mary Bell Clark, Emma Clark and Ellen C. Platt, and three pass books made out in these names and given to Irene M. Clark.

Mrs. Clark told the teller that she wanted to have the books so fixed or the entries so made that the money should belong to the three nieces named by her, but so that they could not draw it out and spend it during her life. The teller, therefore, entered upon each of the pass books—"Only Mrs. Irene M. Clark has power to draw." Mrs. Clark while at the bank declared to Mrs. Ellen C. Platt, one of her nieces who had accompanied her, that

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she had given her \$1,500 and that she had given the same amount each to Emma Clark and Mary Bell Clark.

The bank had a book called a signature book, in which it entered the name of each depositor with other facts relating to the depositor for purposes of identification. When the bank books were given to Mrs. Clark, Ellen C. Platt wrote her name in this signature book opposite the number of the book in her name and Mrs. Clark also signed under the name of Mrs. Platt, and the two named were included in a bracket. The teller added to the name of Mrs. Clark the word "trustee." The words "Mrs. Clark only to draw" were also written in the margin by the teller. Bank slips were also handed to Mrs. Clark by the teller and she was requested to obtain the signatures of Emma Clark and Mary B. Clark upon those slips and to have them write upon the slips certain other required facts and return the same to the bank to be pasted in the signature book, and this was afterwards done.

On the same day upon her return home, Mrs. Clark showed these three bank books to the husband of Ellen C. Platt and said to him that she had given the girls \$1,500 each. Mrs. Clark also informed Mary B. Clark and Emma Clark that she had made each a gift of \$1,500 and other personal friends and neighbors were informed by her that she had given to these nieces \$1,500 apiece.

The bank books remained in the possession of Mrs. Clark until her death with the exception of a short period before her death when they were delivered to Mrs. Ellen C. Platt with four other bank books belonging to Mrs. Clark absolutely, she remarking at the time "Nellie, I want you to take these bank books and keep them until I call for them; possession is half." They were retained by Mrs. Platt or a few days when they were asked for by Mrs. Clark and returned to her.

In a controversy between the executor of Mrs. Clark's will and the three nieces,

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Held: That Mrs. Clark intended to and did make a valid gift of these deposits to her nieces during her lifetime, which was accepted by the nieces; and that her subsequent control over the deposits was as trustee for the nieces.

### A AND B, PAYABLE TO BOTH.

Appeal of Main, (1901), 73 Conn. 638; 48 Atl. Rep. 965.

*A deposit by a mother of money in the name of herself and her daughter, payable to both, where the mother does not intend to make a gift, but intends merely that the money shall go to the daughter upon the mother's death, creates no gift in favor of the daughter.*

In 1895 Sarah A. Goodrich opened three accounts in the Dime Savings Bank in Norwich, Conn. In each instance the account was opened in the name of the depositor and one of her three daughters, "payable to both." It appeared that it was Mrs. Goodrich's wish that the money should go to the daughters upon her death. She retained control of the pass books during her lifetime and intended to retain control of the money. The deposits were made by an agent, who informed the bank of Mrs. Goodrich's wish in the matter. He was told by the bank officers that the entries could not be made in the deposit book in the specific language requested by Mrs. Goodrich, but that, "if they put the money in the names of both mother and daughter, as they in fact did place it, it would have the effect that Mrs. Goodrich desired." With the exception of the addition of interest the amounts remained unchanged until Mrs. Goodrich's death in 1898.

Upon her death one of the daughters claimed one-half of the deposit, in which her name appeared, as a gift to her from her mother. It was held that there was no gift; the transaction was an attempted testamentary disposition and was invalid because not made in proper form.

## **BANK DEPOSITS**

In the opinion it was pointed out that Mrs. Goodrich "intended that the deposit should be made in such a way that the daughters would take no interest until their mother's death. That this was the purpose of the transfer was understood by all the parties including the bank officers, and it does not appear that the daughters themselves supposed that it was made for a different purpose. If it had been the intention of Mrs. Goodrich in making these deposits that a joint interest with herself in the money should immediately vest in her daughters, the gift would not have failed because she retained possession of the bank books. Her possession as a joint owner would have been regarded as the possession of the other joint owners. But as the entries and transfer in question were made only for the accomplishment of the purpose expressed by the decedent to her agent, Smith, and by him to the officers of the bank, and as it was the intention of all the parties that that was to be the only effect of the transfer as made, there was no effective gift to the daughters. It was an attempted testamentary disposition of the money, and was void because not made in legal form."

### **IOWA.**

#### **A IN TRUST FOR B.**

In re Podhajsky's Estate, (Iowa, 1908), 115 N. W. Rep. 590.

Where one makes a deposit in a savings bank in his own name in trust for a designated beneficiary, declaring at the time that he wishes the deposit to vest in the donee at his death there is a completed and enforceable trust in favor of such beneficiary and the fund is held not to pass as a part of the estate of the depositor.

### **MAINE.**

#### **B SUB. TO A.**

Northrop v. Hale, (1881), 73 Me. 66.

## DECISIONS

*A put her money in bank in the name of "B, sub. to A." A retained the bank book during her lifetime and it was in her possession when she died. B did not know of the deposit until after A's death.*

*Held, the money belongs to A's estate and not to B. The essentials to a gift, delivery to B and loss of dominion by A, are wanting in this case.*

On June 10, 1874 Eliza M. Robinson deposited in the Portland Savings Bank \$2,000 in an account:

"Mary Eliza Northrop; sub. to E. M. Robinson."

Mrs. Eliza M. Robinson was childless and Mary was a daughter of her nephew. Eliza retained the bank book during her lifetime and it was in her possession at the time of her death. She drew the dividends as they accrued and \$25 of the principal and used the sums so drawn entirely for her own use. It did not appear that Mary ever knew of the fact of the deposit having been made.

A bill in equity by Mary against the administrator of Eliza for the deposit was dismissed.

Held: There was no gift *inter vivos*. The bank book remained in the possession of Mrs. Robinson. The funds deposited ever remained subject to her control. By the very terms of the deposit as entered on the books of the bank it was "sub. (subject) to Mrs. E. M. Robinson," and her conduct and that of the bank was in entire accordance with such views. The entry in the pass-book decisively establishes the proposition that here there was no complete and perfect gift.

A declaration of an intention to give is not a gift. The donor must be divested of, and the donee invested with, the right of property. The indispensable essentials of a gift, delivery to the donee, and loss of dominion over it by the donor, are wanting in this case.

In the case at bar there was not merely no notice at any time of the deposit, and no delivery to Mary of the

## BANK DEPOSITS

pass-book, but a complete control of the deposit reserved to the depositor and exercised by her.

If there is a trust in the case at bar, it is for the depositor. There is no language indicating a trust for Mary but the reverse, that it was for the depositor subject to her control and controlled by her. This negatives a trust for Mary. There has been no delivery of the bank book. If the savings bank book was given to Mary as trustee, it was as trustee for the depositor. Parol evidence is admissible to show the intention of the depositor either at the time of the deposit or subsequently, but none such was offered. Neither did the depositor declare herself as trustee, or as making the deposit for a *cestui que* trust for whom she was trustee. Where a trust is once completely and effectually created, whether by a formal instrument, or by parol where a parol declaration is sufficient, the trust is beyond revocation, by the simple act of the donor. But here there was no such trust. There never was a moment when the depositor had not entire control of the funds and when she could not have revoked the trust if there had been one created.

B; C. B. P. A.

Northrop v. Hale, (1881), 73 Me. 71.

*A, having \$1,700 on deposit in her own name and being limited to \$2,000 in that account, deposited the further sum of \$2,000 in the name of "B, c. b. p. (can be paid) A." A always retained the book and B did not know of the deposit until after A's death. Held, the money belongs to A's estate as she never divested herself of title.*

On June 29, 1874, Elizabeth M. Robinson having \$1,700 in the Maine Savings Bank, which bank was subject to the provisions of the statute limiting the amount of any one depositor to \$2,000, deposited the further sum of \$2,000 in the name George J. Northrop; c. b. p. (can be paid) Elizabeth M. Robinson."

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A bill by George against the administrator of Elizabeth to recover the deposit was dismissed.

Held: The deposit, when made, was not deposited in trust for the complainant, who was not aware of its existence, so far as appears. If there was any trust it was for the depositor, but this bill is not brought to enforce any such trust.

Mrs. Robinson always had the book; she never parted with it. She never by word or act transferred her title, but drew for her own purposes the accruing interest and such portion of the original deposit as she deemed expedient. The control of the money deposited never vested, and was never intended to vest, in the complainant. There was never a moment of time when he could have drawn out a dollar had he so wished. It ever remained under the control of the depositor.

### B, SUBJECT TO A DURING HER LIFETIME.

*Barker v. Frye*, (1883), 75 Me. 29.

*A deposited money in the name of "B, subject to A during her lifetime," informing the bank and also B that the money was for him. Subsequently she had the words "subject to A" erased, telling the bank the time had come to give B full control and the money become B's absolute property to stand in his name without restriction. She also informed B by letter, and he replied, requesting her to send him the book. Afterwards A delivered the book to C, with a written order for the deposit. After A's death, in a controversy between B and C, B is held entitled to the money. When the deposit was first made, the intention of A was clearly shown and there was a declaration of trust in favor of B. When later, the words "subject to order of A" were erased, A divested herself of trusteeship, B's letter requesting the book was an acceptance of the gift, and the money was B's absolutely. The actual delivery of the deposit book to B was not necessary. A was without power, therefore, to dispose of the money.*



## BANK DEPOSITS

In May, 1870, Lydia P. Frye, grandmother of the plaintiff, Edward Barker, and of three others, made four distinct but equal deposits in the Augusta Savings Bank taking a book for each with the same heading except the name, the one here in question being payable

“Edward Barker, subject to the order of Lydia P. Frye during her lifetime.”

Subsequently she made other deposits which, with the accumulated interest, were duly entered in the book. Each book had upon it the same amount. The dividend of August 1, 1872 was withdrawn. At the time of making the first deposit, Mrs. Frye said to the treasurer of the bank that she desired to make a deposit for each of her grandchildren, of whom she named Edward Barker as one, to which she proposed to make additions from time to time, and expressed the hope that with the accumulated interest, the deposit might amount to enough to be of advantage to them when they should reach a suitable age to take charge of the money themselves. She said she “wanted to do something for the children.” She subsequently informed Barker of what she had done and that the money was intended for him and the other children.

On September 19, 1881, Mrs. Frye appeared at the bank with the books and informed the treasurer “that the time had come when she desired to make such a change in the terms of the deposits made for her grandchildren \* \* \* as would give them full control over them, and the amounts on each book become the absolute property of the parties named therein and her right to control them should cease. Her expressed wish was that her claim over the amount of the deposits should be withdrawn as to each case, and the books so changed that they would stand in the names of her grandchildren without any restriction whatever.” The treasurer then, and at her request, erased from the books the original entry, “sub-

## DECISIONS

ject to the order of Lydia P. Frye," and erased the same entry from the books of the bank. Of this change the plaintiff, Edward Barker, was immediately notified by letter with the additional information that the books would be delivered the first time they met. Barker replied with the request that the books might be sent him.

A short time before her death she delivered the books to William A. Frye with a written order to enable him to draw the amount of each deposit.

In this suit by Edward Barker against William A. Frye to recover the possession of the deposit book, claimed by both parties, there is a decree for the plaintiff.

Held: The making of the deposit by Mrs. Frye in its original form, her declaration to the treasurer that the deposits were for the children and her informing of Barker of what she had done and that the money was intended for him and the other children clearly showed the intention of the depositor and constituted a declaration of trust in his favor. When later she had the words "subject to the order of Lydia P. Frye" erased, she divested herself of her trusteeship as well as of all interest in, or control over, the money, and invested Barker with the absolute title and control over it. Barker's reply to her letter informing him of the change, requesting that the books might be sent to him, was an acceptance of the gift.

So far as necessary to make a valid gift of the money and divest Mrs. Frye of any interest in it as trustee or otherwise, everything was done and completed. No condition remained attached to the deposit; nothing to be done in the future. The intention that the gift was then to take effect cannot be disputed. Under the by-law of the bank, in view of which Mrs. Frye's act must be construed, by which all deposits are entered on the books of the bank and a book given to each depositor in which every deposit made by him will be entered, which will be his voucher and the evidence of his property in the institu-

## BANK DEPOSITS

tion, the person whose name appears unconditionally on the books of the bank must, by the bank, be considered the depositor and alone, in person or by order, be authorized to withdraw the deposit. After this change, Mrs. Frye could not, and Barker could, withdraw the money credited to him upon the books. Applying the strictest rules laid down in the decided cases as necessary to constitute a valid gift and this would stand the test.

But much stress is laid upon the fact that the deposit book was not delivered to Barker. This was not necessary. A delivery of the property given, actual or constructive, is undoubtedly necessary to a valid gift, as evidence that the donor has parted with all control of and interest in the property. But the nature of this delivery must depend upon the facts of each case. The law does not require impossibilities or useless ceremonies. When the deposit stood upon the books subject to Mrs. Frye's order, a declaration of trust in herself and an acceptance of the *cestui que trust* was sufficient, for she could not deliver the money to herself, and a delivery to the beneficiary would defeat the trust intended.

It is, however, conceded that a delivery of the pass book would have been sufficient, and the cases show that it is so even without an assignment. But the book is only evidence of the right to the property. Its delivery is not a delivery of the thing itself, but the evidence of it. The bank's books are just as good evidence of title to the deposit as the book given to the depositor. When the change of entry was made, thus giving authority to the bank to pay to the depositor, it was a more effectual delivery than if an unsigned pass book had been given to the donee. In any event, the delivery need not be directly to the donee, but may be to another for him. Here the evidence of title was given to the treasurer for the sole benefit of the donee. But this is not all. The deposit was the subject of the gift. The act and declarations

## DECISIONS

of Mrs. Frye, with the change in the books, were equivalent to a withdrawing and redepositing the money for the donee. If this had been done, the delivery could hardly have been questioned. But the ceremony would have been a useless one and would have added no force to the evidence of a change of property. Where property is already in the hands of the donee, proof of an actual manual tradition at the time of making the gift is not essential.

Here the title to the deposit is in Barker. The possession of the pass book, one of the evidences of that title and his voucher, is in the hands of the defendant, William A. Frye. How it came there is not material. His assignment from Mrs. Frye, however obtained, cannot avail. The property having been conveyed to Barker, though by gift, that gift could not be revoked. It will not be set aside except in behalf of a creditor or a subsequent purchaser. William A. Frye is neither. There is no pretence that he was a creditor or that he paid any consideration for the assignment and the book itself gave him sufficient notice of the previous conveyance. He then has no title to the money, or the book, and can stand in no better position than Mrs. Frye or her representative. After she had done all that was necessary to complete the gift, she notified Barker that she held the book for him. She then, at best, held it in trust. That trust would follow it into whomsoever hands it might go with notice. This notice William A. Frye had. If the contract is executed wholly, or, if not wholly, yet in a substantial degree, and there remains something to be done to complete the title or otherwise render the enjoyment more beneficial to the plaintiff, equity will require that thing to be done, although the promise was wholly voluntary. Here the contract was wholly completed. To render the enjoyment of the thing more beneficial to the plaintiff, it is necessary that he should have the book withheld by the defendant.

## BANK DEPOSITS

### A; SUBJECT ALSO TO B.

Curtis v. Portland Sav. Bank, (1885), 77 Me. 151.

*A deposited money in the name of "A, sub. also to B," afterwards retaining the book and making subsequent deposits and withdrawals until, four days before her death, she delivered B the book saying "keep this, and if anything happens to me, bury me decently, put a headstone over me, and anything that is left is yours."*

*Held, There was no gift inter vivos to B at the time of deposit, but the delivery of the book four days before her death, constituted a gift causa mortis by A to B, subject to the trusts with which the gift was coupled.*

In March 1878, Mrs. Jane McCue, having a deposit in the Portland Savings Bank, went to the bank with her niece Catherine E. Curtis, and by her directions an officer of the bank made this memorandum on the deposit book:

"Sub. also to Cath. E. Curtis."

Mrs. McCue retained possession of the deposit book and subsequently on various occasions both deposited and withdrew out money of the deposit.

On May 30, 1883, four days before her death, Mrs. McCue called Catherine to her, directed her to get the key from her bureau drawer and unlock her trunk and bring the bank book to her, which Catherine did and Mrs. McCue then said: "Now keep this, and if anything happens to me, bury me decently and put a headstone over me, and anything that is left is yours." Catherine then took the book and kept it and her aunt died June 4, 1883.

In an action by Catherine E. Curtis against the Portland Savings Bank to recover the balance due on the deposit, she is given judgment for the amount due on the book.

*Held:* When the plaintiff, by direction of her aunt, took the key from the bureau drawer, unlocked the trunk, and took therefrom the savings bank book and her aunt said, "Now keep this and if anything happens to me

## DECISIONS

bury me decently, and put a headstone over me, and anything that is left is yours," this is our opinion constituted a gift *causa mortis*.

The entry "Sub. also to Cath. E. Curtis" which the depositor caused the bank also to make in March 1878 in her savings bank book, and also in the books of the bank, showed that she then had in contemplation a gift to the plaintiff, but it was not completed by delivery.

But on May 30th, only four days before her death, the declaration above quoted accompanied by the manual delivery of the deposit book, rendered unmistakable her intention. The delivery was sufficient.

Nor did the special qualification annexed to the gift defeat it. This was only coupling the gift with the trust that the donee should provide for the funeral of the donor. If there are any debts, the plaintiff must see them paid.

### B, TRUSTEE FOR A; PAYABLE ALSO TO B IN CASE OF DEATH OF A.

Parcher v. Saco & Biddeford Sav. Inst., (1886), 78 Me. 470, 7 Atl. Rep. 266.

*A had his money in bank in the name of "B trustee for A; payable also to B in case of death of A," it being A's intention that B should have his money when he died. Upon A's death, the deposit is held to belong to his estate and not to B, as there was neither a gift by A to B inter vivos, nor causa mortis.*

Mrs. Marianna Leavitt persuaded Herman Peters, a mariner in the employ of her husband, Captain Amos Leavitt, for a long time, to save his money, and in consequence he sent home money, from time to time, to her to be deposited for him in the savings banks in Saco. He requested her to put the money in two banks, so that if anything happened to one of them he would have something in the other. Mrs. Leavitt made the first de-

## BANK DEPOSITS

posit for him May 6, 1878, in the Saco & Biddeford Savings Institution under this entry:

“ Mrs. Marianna Leavitt, trustee for Herman Peters.”

This form of entry was made at the suggestion of the treasurer of the bank. Other deposits were made under the same entry from time to time, a part by Mrs. Leavitt and a part by Peters himself, but all from the earnings of Peters. Mrs. Leavitt as trustee for Peters took originally, and kept possession of, the deposit book up to the death of Peters, except when Peters took it to carry to the bank when he made deposits.

Soon after February 7, 1882, when Captain Leavitt died, Mr. Peters went to the bank and said: “ This deposit is payable to Mrs. Leavitt in case of my death.” The treasurer replied, “ She has the control during your life, but it is not payable to her after your death.” Mr. Peters said: “ Then make it so.” He was asked if he had any relatives. He replied, “ Yes, but none that I want to have this deposit.” Thereupon the treasurer of the bank added to the entries in the ledger and in the deposit book:

“ Payable also to Mrs. Leavitt in case of death of H. Peters.”

These entries remained without further change to the time of Peters' death. After having this change made, Peters told Mrs. Leavitt that he wanted her to have his money in the bank when he died. She replied, “ Then you must have it fixed so that I can get it.” His reply was, “ It is already fixed.” This was the first that Mrs. Leavitt knew of the change in the entries in the bank books. She did not know of the change when it was made. No part of the deposits or income was ever withdrawn by anyone.

This action is brought by the administrator of Peters to recover the deposits. The Saco and Biddeford Savings Institution was organized in Saco in May, 1827, under act of legislature.

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Article 18 of the by-laws is as follows:

"Any depositor may designate at the time of making his deposit, the period for which he is desirous the same shall remain, and the purpose for which the same is made, and such depositor or his legal representative shall be bound by such conditions by him voluntarily annexed to his deposit."

Article 21: "The act of making a deposit shall be considered sufficient assent on the part of the depositor to the by-laws and regulations of this institution."

Held: The money sued for unquestionably belonged to the plaintiff's intestate in his lifetime. He earned the money and it was deposited in the defendant bank as his money and for his benefit. It would pass upon his death to his administrator, if he did not effectually dispose of it in his lifetime.

It is not claimed that he made any gift *inter vivos*, but it is claimed that by causing to be made upon the bank ledger the entry "Payable also to Mrs. Leavitt in case of death of H. Peters," he made an effectual gift *causa mortis*. Such gifts are not to be favored, as they conflict with the general policy of the law relating to the disposition of the estates of deceased persons. To be valid and take the property out of the general law of administration of estates, the gift must be made during some illness or peril of the donor and in contemplation and expectation of death from that illness or peril, and death must also ensue therefrom. This case does not disclose such circumstances and the intended gift is ineffectual. The money belongs to the administrator.

A; PAYABLE ALSO TO B. A AND B. A OR B; PAY  
EITHER IN ANY EVENT.

Drew v. Hagerty, (1889), 81 Me. 231, 17 Atl. Rep. 63.

*The gift of a savings bank book by A, to his wife B, causa mortis, is invalid without an actual delivery of the*



## BANK DEPOSITS

*book from A to B, or to some one for B, and the delivery must be made for the express purpose of consummating the gift; and a previous and continuing possession by B is not sufficient. Hence, where the book was already in the possession of B, and A said "you may keep it," this was insufficient.*

Daniel Hagerty, who died January 14, 1884, deposited, in 1879, moneys in three savings banks which, at the time of his death, amounted to about \$3,000. One of the deposit books bore the indorsement:

"Payable also to Mary Hagerty;"

Another was in the names of

"Daniel and Mary Hagerty;"

and the third was issued to

"Daniel or Mary Hagerty; pay either in any event."

Mary Hagerty, wife of Daniel, withdrew the money after the death of Daniel, and this action was by the administrator of Daniel against Mary to recover the amount. Judgment for plaintiff.

Held: The most important question is whether the gift of a savings bank book, from husband to wife, *causa mortis*, is valid without delivery, provided the book is, at the time of the alleged gift, already in the possession of the wife. The action was tried before the chief justice and he ruled that to constitute a valid gift *causa mortis* there must be a delivery; that if the property "be at the time already in the possession of the donee, the donor's saying to the donee 'you may have it,' or 'you may keep it—it shall be yours' does not pass the property in the case of a gift *causa mortis*."

We think this ruling was correct. If the act of delivery was for no other purpose than to invest the donee with possession, no reason is perceived why it might not be dispensed with, when the donee already had possession. But such is not its only purpose. It is essential in order to distinguish a gift *causa mortis* from a legacy. With-

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out an act of delivery, an oral disposition of property, in contemplation of death, could be sustained only as a nuncupative will; and in the manner and with the limitations provided for such wills. Delivery is also important as evidence of deliberation and intention. It is a test of sincerity and distinguishes idle talk from serious purposes. And it makes fraud and perjury more difficult. Mere words are easily misrepresented. Even the change of an emphasis may make them convey a meaning different from what the speaker intended. Not so of an act of delivery. Like the delivery of a turf, or the delivery of a twig in the ancient mode of conveying estates, or the delivery of a kernel of corn, or the payment of one cent of the purchase money to make valid the sale of a cargo of grain, an act of delivery accomplishes that which words alone cannot accomplish.

Gifts *causa mortis* ought not to be encouraged. They are often sustained by fraud and perjury. It was an attempt to sustain such a gift by fraud and perjury that led to the enactment of the statute against fraud and perjury.

We are aware that some text writers have assumed that when the property is already in the possession of the donee, a delivery is not essential. But the cases cited in support of the doctrine nearly all relate to gifts *inter vivos* and not to gifts *causa mortis*. A gift *inter vivos* may be sustained without a distinct act of delivery at the time of the gift, if the property is then in the possession of the donee, and the gift is supported by any acquiescence of the donor, or other entirely satisfactory evidence. But the question we are now considering is not whether a gift *inter vivos* can be sustained without a distinct act of delivery, but whether such a relaxation of law can be allowed in the case of a gift *causa mortis*. We think not. Reason and the weight of authority are opposed to such relaxation.

## BANK DEPOSITS

It is the opinion of the court that the gift of a savings bank book, *causa mortis*, to be valid, must be accompanied by an actual delivery of the book from the donor to the donee, or to some one for the donee; and that the delivery must be made for the express purpose of consummating the gift; and that a previous and continuing possession by the donee is not sufficient.

### B OR A.

*Augusta Sav. Bank. v. Fogg and Dearborn*, (1890), 82 Me. 538, 20 Atl. Rep. 92.

*A deposited money payable to "B or A," B having no notice of the deposits until after the death of A. A few days before his death, A told his executor that he had the savings bank book in the house, and to deliver it to B after his death; delivering to the executor at this time a tin trunk, with the key, containing all his valuables except the book in dispute. After A's death the executor delivered the book to B.*

*Held: No gift to B; the deposit belonged to A's estate. There was no delivery of the bank book during the life of B.*

Amos C. Hodgkins during his lifetime deposited in the Augusta Savings Bank various sums of money in the name of

"Dorothy J. Dearborn or Amos C. Hodgkins."

He continued making deposits until shortly before his death. Dorothy was a sister of Amos. The latter had no knowledge or notice of the deposit until after the death of her brother.

A few days before Hodgkins died, he sent for John B. Fogg, the executor of his will, to come to the house of Mrs. Paul where he was living. Fogg had previously been informed by Hodgkins that he had been nominated executor in his will. For nearly a year Hodgkins had kept a portion of his valuables in a locked tin trunk, inside of a locked traveling trunk, at Fogg's house, going to it when he pleased. Fogg at this interview carried the

## DECISIONS

tin trunk to Hodgkin's bed. The savings bank book in controversy was not in this tin trunk, but was in a wooden trunk in another room in Mrs. Paul's house, and neither the book nor the trunk was produced. On Fogg's arrival, Hodgkins sat up in bed, took the tin trunk and called on Mrs. Paul for the key. He then unlocked it and said: "I am going to deliver you this property. There is quite an amount of it, quite a large amount, there are thousands here." He then delivered to Fogg the tin trunk, with the key, containing all his valuables, except the book in dispute. He stated that he had another book in the house that was for his sister, and requested Fogg to deliver it to her after his death. He had sent for Mrs. Dearborn to come and visit him and he expected to be able to deliver her the book himself. He had previously expressed his intention to Fogg to give her more than the others. Fogg received the tin trunk and key but did not find the book in question in it. He found it after the testator's death in the wooden trunk at Mrs. Paul's and delivered it to Mrs. Dearborn in accordance with Hodgkin's instructions.

Thereafter both Mrs. Dearborn and Fogg, as executor, claimed the funds and gave notice to the bank, which filed a bill of interpleader. The question for the court to determine was whether at the time of the death of Hodgkins, title to the sum represented by the bank book was in Mrs. Dearborn, who claimed it as a gift *inter vivos*, or in Hodgkin's estate. The conclusion of the court is that there was no gift.

Held: The learned counsellors for the claimant set up her claim "not by reason of any trust, nor of a *donatio causa mortis*, but as a valid gift *inter vivos*."

The evidence shows an intention to give, but not during life. The gift would have been complete upon the delivery of the bank book. The testator retained possession of it beyond all question until a few days before his death.

## BANK DEPOSITS

He then delivered the key of a trunk, containing the book, not to the claimant nor to any other person to be forthwith delivered to her, but to the executor named in his will for her "at his decease." Had he recovered, would the title of the deposit have gone from him? Was the gift complete in his lifetime?

By giving the evidence the most favorable construction of which it is susceptible in the claimant's favor, she was only entitled to receive the bank book upon the contingency of the supposed donor's decease. The end of his life was made a condition precedent to a complete transfer of the deposit to the supposed donee. Even if the substituted delivery of the key to the trunk could take the place of an actual delivery of the bank book, which is stoutly denied, no gift *inter vivos* is shown. A gift of that sort must be complete between the living. It cannot be consummated after the death of the supposed donor. Such a disposition would be inoperative under the statute of wills.

### A IN TRUST FOR B.

Bath Sav. Instn. v. Hathorn, (1895), 88 Me. 122, 33 Atl. Rep. 836.

*A deposited money "A in trust for B," told the bank he wished the money to go to B at his decease, told a sister of B that the money was for B at his decease, but never told B thereof. A retained the book until his death, and never drew any part of the principal or interest. He told his housekeeper the money would be a great help for B.*

*Held: The entry "in trust for" is sufficient to create a prima facie trust for B. It might have been controlled by evidence showing a contrary intention, but such evidence is wanting; and the evidence in the case confirms the trust. The equitable title went to B at the time of deposit, and the legal title followed upon A's death.*

On July 1, 1882, Henry Walker deposited \$700 in the

## DECISIONS

Bath Savings Institution and took out a deposit book  
“Henry Walker in trust for Alice B. Files.”

At the time of making the deposit he had a conversation with the treasurer of the bank as to its form and the treasurer told him if he put the book in any one's name, in trust for any one, it would go to that person at his decease, and Mr. Walker said he wished it to; that he wished it to go to Miss Files. Mr. Walker retained the bank book ever after, but never drew any part of the principal or interest therefrom, but took the book to the bank occasionally to have the accrued dividends added. On one occasion very soon after the deposit was made, Miss Files' sister was visiting at his house and saw the book among some other papers; she took it up and saw the form of entry and he told her then: “Yes, that is for Alice at my decease, and the next will be for you.” The sister communicated this information to Alice who expressed her satisfaction thereat. Walker also on several occasions told his housekeeper that the book was for Alice; “that will be a great help to Alice, won't it” etc.

Walker died October 2, 1891 and the book was found among his papers. The bank brought this bill of interpleader against his administrator and Alice B. Files to determine the title to the deposit.

Held: The evidence shows that Mr. Walker intended the deposit for Alice at his decease, but never communicated his intention to her.

The authorities all say that a gift *inter vivos* must be complete. The donor must divest himself of all dominion over the thing given and the title must pass absolutely and irrevocably to the donee.

A voluntary trust is an equitable gift, and, like a legal gift *inter vivos*, must be complete. A declaration of trust as effectually passes the equitable title of the fund to the *cestui* as a gift *inter vivos* passes the legal title to the donee. The distinction between them is of a technical

## BANK DEPOSITS

nature. In a trust, the real title vests in the donee, but the legal title, perhaps carrying control of the property, may be placed elsewhere; while in a gift, both the real and legal title instantly fall to the donee. It is not necessary, therefore, that he who declares a trust should divest himself of the legal title, if perchance, he so does is as to transfer the real or equitable title to the *cestui*; for then he creates an estate really no longer his own. He may retain the legal title, giving him control, but for the benefit of the *cestui*, according to the terms of the trust. His control becomes subject to the direction of courts of equity that always supervise the administration of trusts. They are the children of equity; they spring from it and cannot survive without its aid and control. The trustee is merely an agent to administer them, and nothing more.

A trust of personal property may be created or declared by parol.

In this case the deposit is in the name of the donor "in trust for the donee." Standing alone, this entry does not work an absolute, indisputable gift in the form of a dry trust, that is, a trust without limitation or condition, that may be terminated at the will of the *cestui*; but extrinsic evidence is competent to control its effect.

The evidence discloses that at the time the donor made the deposit, he expressed a desire that the donee should have the money at his death. That certainly shows no intent to part with the legal title at an earlier day. He is said to have subsequently made talk of the same purport; but he neither informed the donee of the deposit, nor made any effort, nor did any act, to apprise her of it, or of his intention concerning it. The deposit on his part was both voluntary and secret. Information may have been communicated to her by others, but never at his request nor with his knowledge.

What evidence, then, operates to pass the equitable title in the deposit to her. He had consummated no

## DECISIONS

contract with her. His intentions were kept in his own breast. He could have withdrawn the money at any time and have made a new disposition of it and she may not have been the wiser, so far as he knew. It is just as essential, to establish the trust sought to be set up here, to prove some act on the part of the donor that shall operate to pass the equitable title to the donee, as it is to prove delivery in a gift *inter vivos*. Both require the same essentials. In both, some title must pass from the donor, differing only in degree. A gift must be executed by delivery; a trust by declaration.

All our cases require something more than a mere intention to give, a promise to give, or an expectation to give. Benevolence alone will not do. There must be beneficence also. The mystery sometimes supposed to exist about a trust, cannot change the nature of a transaction. A voluntary trust is a gift, and requires all the essentials of a plain gift to sustain it.

Some of the cases are in conflict concerning the question now under consideration, more in the application of the law to the ever varying facts in the numerous cases, than otherwise; but our own cases are all consistent, and squarely hold to the doctrine that a trust in personal property may be created by parol, and that a deposit in bank in the name of another may be explained or controlled by evidence outside the written terms of the deposit.

In this case the terms of the deposit clearly show an intended trust in favor of the donee, but may be controlled or limited by extrinsic evidence.

This evidence confirms the trust, showing that it should cease at the death of the donor and that the legal title should then pass to the *cestui*. When the deposit was made the treasurer of the bank told the donor that, at his decease, the money would go to the donee, and the donor replied that was his wish. All the subsequent acts and declaration of the donor show the same intent.



## BANK DEPOSITS

The gift cannot be upheld as an absolute gift *inter vivos*, nor as a gift *causa mortis*, for these gifts require a delivery of the res, a complete transfer of title. They differ from a gift in trust, in that they purport to and must pass the whole title, so that the donor can have no dominion or control over them. But a gift in trust withholds the legal title from the donee. It may be transmitted to a third person, or it may be retained by the donor, but in either case the equitable title has gone from him, and unless the declaration of trust contains a power of revocation, or the wide discretion of chancery attaches, it leaves him powerless to extinguish the trust. Of course the trust must be established by proof, and the fact that no evidence of a voluntary trust, once created, remains or can be shown, does not alter the principle. Many rights fail of enjoyment from lack of evidence that might once be adduced. So a secret trust may be valid when it can be proved, but if the donor conceals the evidence of it and later appropriates the fund to his own use, it is simply a wrong on his part that prevails because of his perfidy, and goes unpunished and unnoticed, because unknown. The *cestui's* rights are the same, although his remedy may have been destroyed.

The prevailing doctrine now is that notice to the beneficiary is not necessary to the validity of a trust; but when shown, it has controlling effect.

In this case, the entry "in trust for" is of clear and unmistakable import and sufficient to create a *prima facie* trust. It might have been controlled by evidence that would have shown a contrary intention but such evidence is wholly wanting. Moreover, all the declarations, acts and conduct of the donor are consistent with the presumption arising from the entry itself, and show that it expresses the true import of the transaction and creates a completed trust in favor of the donee.

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### A AND B OR THEIR SURVIVOR IN JOINT TENANCY.

Norway Savings Bank v. Merriam, (1895), 88 Me. 146, 33 Atl. Rep. 840.

*A deposited money "A and B or their survivor in joint tenancy," always retaining the bank book and never informing B of the deposit. A's intention was that the deposits, or what remained of them, should go to B at her death in case B survived A, and take the place of certain pecuniary provisions for B in her will, but A died without ever changing her will in this respect.*

*Held: There was no gift inter vivos, nor causa mortis, nor was there the creation of any trust in favor of B, and upon her death, the money belonged to A's estate.*

On April 27, 1892, Mrs. Esther S. Reed, having at the time a deposit in the Norway Savings Bank of \$1,901.23 standing in her own name, surrendered her bank book and had the whole of her deposit transferred to two new accounts. By her direction the sum of \$950.62 was entered as follows:

"Esther S. Reed and Harry Q. Millett or their survivor in joint tenancy."

And the sum of \$950.61 was entered by her direction

"Esther S. Reed and Myra J. Millett or their survivor in joint tenancy."

Both pass books were delivered to Mrs. Reed and were always afterward retained by her; they were found after her death by her executor among her private papers. She never in any way notified either Myra J. or Harry Q. Millett of the transaction at the savings bank, nor did either of them have any knowledge of it from any source until after her death.

Mrs. Reed died October 26, 1892, leaving a will dated August 13, 1883, nearly nine years before the time of making the deposits above referred to, in which she bequeathed \$1,000 in favor of Harry C. Millett and \$500 in favor of Myra Q. Millett. Myra was an adopted daughter

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of Mrs. Reed, and Harry the son of Mrs. Millett. Mrs. Reed never drew any portion of the principal or interest of the deposits, and the accounts were in no way changed, except that the semi-annual interest was placed to their credit.

Evidence was introduced of declarations and statements made by Mrs. Reed tending to show an intention on her part that these deposits should take the place of the pecuniary provisions of her will in favor of Mrs. Millett and her son, and that she intended to change her will by striking out the bequests in their favor. She died without having made any change in her will.

Both of these deposits being claimed by the executor of Mrs. Reed's will, as belonging to her estate, and by Mrs. Myra J. Millett and Harry Q. Millett respectively, the Norway Savings Bank interpleaded the parties to have the title determined.

Held: That the acts of Mrs. Reed were not sufficient to constitute a gift of each of these deposits must be and is conceded. To constitute a valid gift *inter vivos*, the giver must part with all present and future dominion over the property given. He cannot give it and at the same time retain the ownership of it. There must be a delivery to the donee or to some one for the donee. And the gift must be absolute and irrevocable without any reference to its taking effect at some future period.

Here there was no delivery, actual or constructive. No surrender by Mrs. Reed of the control over the deposits. Whatever Mrs. Reed's intention may have been, intention alone is not sufficient to constitute a valid gift.

For the same reasons, as well as for others, these were not gifts *causa mortis*.

But it is claimed that these acts of Mrs. Reed were sufficient to create voluntary trusts in favor of Myra and Harry. (After referring to its language in *Bath Savings Institution v. Hathorn*, the court continues): The

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creation of a trust is but the gift of the equitable interest. But on account of the difference in form and purposes of the two transactions, it necessarily follows that different acts are essential in the two cases. While delivery and surrender of all present and future dominion over the property given is absolutely necessary in a gift, these would be inconsistent with the very purposes of a trust, where a person creates himself as the trustee; possession and control in such a case remain in him who has the legal title, subject to the direction of courts of equity.

But while delivery and surrender of possession are not necessary in the creation of such a trust as is here sought to be maintained, there must be other acts which are so far equivalent as the nature of the transaction will permit. A perfect or completed trust is created where the donor makes an unequivocal declaration, either in writing or by parol, that he himself holds the property for the purposes named. . He need not in express terms declare himself trustee, but he must do something equivalent to it, and use expressions which have that meaning. To create a trust the acts or words relied upon must be unequivocal, implying that the person holds the property as trustee for another. There must be an executed gift of the equitable title without any reference to its taking effect at some future time.

While courts of equity will enforce a perfect and completed trust although purely voluntary, it is certainly true that equity will lend no assistance towards perfecting a voluntary contract or agreement for the creation of a trust, nor regard it as binding so long as it remains executory. In order for such a trust to be valid and enforceable, it must always appear from the written or oral declaration, from the nature of the transaction, the relation of the parties and the purposes of the gift, that the fiduciary relation is completely established. Nor will the court enforce as a trust a transaction which was

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intended as a gift but is imperfect for that purpose, for then every imperfect instrument would be made effectual by being converted into a perfect trust. If such a trust is otherwise sufficiently created, its validity is not affected by the fact that the donor reserved the right to modify the purposes or revoke the trust, nor that he reserved the income of the trust fund during life.

The foregoing is the general doctrine in relation to voluntary trusts as laid down by many authorities.

Applying these general principles to the facts in the cases under consideration, it becomes necessary to determine whether Mrs. Reed by any unequivocal language or act showed her intention to create an executed voluntary trust with respect to these deposits in favor of the persons named, so that whatever legal rights she retained were to be thereafterwards held by her as trustee for the donees.

We do not think that any acts or language of hers can admit of such interpretation. She never made a declaration of trust, formal or otherwise. She never notified the persons named as joint tenants of the transactions at the savings bank; and while this may not be necessary if the creation of the trust is clearly established, it is a circumstance of greater or less weight according to the facts of each case, upon the question of intention. It seems to us that she purposely retained possession of the pass books and withheld all knowledge of the transaction from the persons named in the entries upon the books in order that she might retain the control of the deposits for her own purposes if necessary. We cannot see that she ever, by act or word, constituted herself a trustee of these sums of money for others.

It is of course true that the transaction at the savings bank in April 1892 had some significance and that by the change that Mrs. Reed had made at that time she intended to do something for the benefit of the persons whose names

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by her direction were respectively entered upon the books as joint tenants with her. But we think it is clear from the nature of the transaction that she did not intend by this transfer of her deposit to the new accounts, to make at that time fully executed gifts either of the legal or equitable title to the new deposits, or to part with all control over the same, except such as she might retain as trustee for the benefit of others; but rather that her intention was to make a testamentary disposition of these deposits so that the persons named should each take, in case he or she survived her, what might be left of each sum after her death. Such an attempted disposition is inoperative because contrary to the statute of wills.

It cannot be claimed that the persons named as joint tenants could draw any portion of the funds until after the death of Mrs. Reed; until that time she intended to retain possession and control, not merely as trustee. It was only after her death that the survivor should have the benefit of the money deposited; until that time the attempted gift was not to take effect.

There is a well-recognized distinction, and one upon which may depend the validity of the transaction between a fully executed gift or trust in which the donor reserves the right to the income or even to such part of the principal of the fund as may be needed, and an unexecuted trust which is not to take effect until the death of the donor.

Our conclusion, therefore, is that there was no perfected gift of either the legal or equitable title to the sums deposited by Mrs. Reed in the Norway Savings Bank, and that these deposits consequently belong to her estate.

### A OR B, PAYABLE TO EITHER.

*Bath Savings Institution v. Fogg*, (1906), 101 Me. 188, 63 Atl. Rep. 731.

*A deposit by A in the names of A and B, where A intends that, upon his death, B shall have the deposit, and where A*

## BANK DEPOSITS

*retains the pass book and does not notify B of the deposit, does not constitute a gift or a trust in favor of B.*

Jane Cruikshank deposited money in a savings bank in the names of herself or her sister, "payable to either." She stated to the treasurer of the bank that her object in so opening the account was that, upon her death, her sister might have the money. The treasurer told her that, in order to make sure of the accomplishment of her object, she should notify her sister of the deposit and deliver the book to someone for her sister. It did not appear that the depositor ever heeded this advice. It was held that the depositor had not made a valid gift for the reason that there was no delivery of the deposit, or of the evidence of the deposit. It was manifest from the conduct of the depositor that she never intended relinquishing dominion and control over the fund during her lifetime. Her express wish was to make the deposit upon such terms that it would operate as a transfer of the fund at her decease.

For the same reason that she never intended the sister to have any beneficial interest in the fund until after her death, there was no valid trust in favor of the sister.

## MARYLAND.

### B, SUBJECT TO ORDER OF A.

Gardner v. Merritt, (1869), 32 Md., 78.

*A deposited money in the name of "B, subject to order of A," B being A's grandchild, and the by-laws of the bank providing that parents might deposit for the benefit of children, subject to the control of the parent. A declared she was going to put the money in bank for the child, and she excluded this particular child from her will. A had an account of her own in the same bank. After A's death her daughter drew the money, and B thereupon sued the daughter therefor.*

*Held: There was a gift of the money by A to B at the time*

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*of deposit, which was perfected by delivery to the bank as bailee for B. The words "subject to order of A" do not signify that A retained ownership, and only intended a future gift to B. Interpreted in the light of the bank's by-law, as well as in view of all the facts, they mean that A's control was such as might be necessary for the protection of B's interest, B having title, and not that A's control was that of owner of the deposit.*

On September 4, 1860, Susanna A. Merritt opened an account in the Savings Bank of Baltimore in the name of her grandchild, a son of one of her daughters, then deceased, as follows:

"John G. Gardner, subject to the order of Susanna A. Merritt, or Susanna Merritt."

She continued to make deposits in this account down to the time of her death. At the time of the first deposit she declared she "was going to put the money in bank for the child." The bank was organized for the purpose of receiving such small sums of money as are the profits of industry, or donations to widows, children and others; and its by-laws provided that guardians could deposit for the benefit of wards and parents for the benefit of children, and if desired at the time of deposit, subject the same to the control of such guardian or parent.

In 1858 Susanna A. made a will devising all her property to her living children, and excluded her grandchild, John G. Gardner, from all benefit of her estate. The estate so devised had been given to her by all her children, including Mrs. Gardner, who was then alive. The deposits in the savings bank in the name of John G. Gardner were the products of property which had been conveyed to her in his name. Prior to opening the account she had been in the habit of giving to the mother, when living, or to the father, such products. Then she declared her intention to stop giving it to the father and to put it in bank for the child—that she wished him and not the father



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to have it. During all the time of these deposits Susanna A. was also making deposits to a separate account in her own name.

After the death of Susanna A. the deposits were withdrawn by Susanna, daughter of Susanna A., and claimed by her to belong to the latter's estate. In this suit by John G. Gardner against Susanna, he is adjudged entitled to the money, with interest from the time of withdrawal.

Held: Did these moneys become, when deposited, perfected gifts to the grandchild, or did they remain the property of the grandmother—were the gifts perfected, or do the facts manifest an intention to give in future—did the acts of making the deposits, under all the proof, divest the grandmother of the title to the moneys, and vest the same in the grandchild?

The grandmother must be presumed to have had knowledge of the bank's by-laws, authorizing parents to deposit for the benefit of children and subject same to control of the parent, for she acted on them by making the deposit for the benefit of the grandchild, subject to the order of herself or daughter Susanna.

It is contended that because of the words "subject to the order of" the depositor, the deposits did not become the property of the grandchild, but remained the property of the donor; that these words explained and limited the acts of deposit to the effect of a declaration of an intention to give in future.

In the absence of these words, it is clear the declaration of an intention to give, followed by actual delivery of the subject matter of the intended gift, to a bailee, for the benefit of the donee, constituted a perfected gift. A gift is inoperative without delivery. To be valid, it can have no reference to the future, but must go into immediate and absolute effect. The delivery may be to the donee, or trustee, or guardian acting for the donee, or to any bailee of the donee. All these conditions were met in

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this case. The money was delivered by the donor to the bank as bailee of the grandchild, by direction of the donor that it should be entered to his credit in an account standing open in his name.

The words "subject to the order of" the depositor are not liable to the interpretation claimed by the daughter, but are to be interpreted in reference to the language of the by-law that parents may deposit for the benefit of children, and subject the deposits to the control of the parents. These deposits when made were for the benefit of the grandchild; the delivery to the bank for the benefit of the grandchild was a perfected gift to him, and the control retained by the grandmother, or her daughter, was such control as is contemplated by the by-law—a control for the benefit of him to whose use the money was delivered—such control as might be necessary to the protection of the interests of the donee, of the same nature as a guardian might exercise for the benefit of his ward, and not such control as would pertain to a continuing legal power and dominion over the deposits.

Further held that this construction of the effect of the words in question is sustained by a review of all the facts in the case. There are no facts from which it can be argued that her purpose in making the deposit was to make a future gift, but all the facts indicate that the act of deposit was intended as a delivery and immediate perfection of the gift.

### A, SUBJECT TO HIS ORDER OR TO ORDER OF B.

Murray v. Cannon, (1874), 41 Md. 466.

*A deposited money "A, subject to his order or to order of B," his daughter. B first had possession of the book, then C held it, and returned it to B after A's death. Held: The money was deposited to the credit of A, who retained dominion and control over it to his death. B's possession was as agent of A and not as owner, and the agency was revoked by A's*

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*death. The form of entry and possession of the book by B were insufficient to deprive A of control, and possession of the book did not constitute a delivery of the money. There was no perfected gift by A to B, and the deposit belongs to A's estate.*

James Cannon opened an account in the Savings Bank of Baltimore as follows:

"James Cannon, subject to his order or to the order of Mary E. Cannon."

Mary E. was his daughter. During his lifetime the book was in the possession of Mary, who afterwards became a Mrs. Murray, and when she moved away she left the book with a Mrs. Kone, for convenience, in whose possession it remained until it was returned to Mrs. Murray after the death of James. Elizabeth Cannon, wife of James, knew nothing of the deposit until after his death.

This suit is by Elizabeth, wife and administratrix, against Mary, daughter of James, to obtain the money claiming that it belonged to the estate of James. The grounds upon which the daughter claimed the money were the entry in the deposit book and possession of the book during the lifetime of James. Decree for the wife.

Held: Was there a gift by James to Mary in his lifetime? To perfect a gift, delivery is indispensable. There must be a parting by the donor with the legal power and dominion over it. If he retains dominion, there cannot be a perfect gift.

The money was deposited to the credit of James, and so continued up to his death. He retained dominion and control over it by the valid terms of the account and could at any time have drawn it out or revoked the power given to Mary, to obtain it upon her own order. If she had drawn out any portion she would have drawn it as the money of James, acting as his agent and by virtue of a then existing authority, derived from him. This agency

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was revoked by his death and the bank properly refused to recognize it after that period.

The question is settled by *Gardner v. Merritt*, 32 Md. 78. It cannot be insisted after that decision that James parted with legal dominion and control of the money standing in his name in the bank because it was there subject to his order or "the order of Mary E. Cannon." On the contrary it was his as absolutely as it would have been hers if the deposit had been made in the name of "Mary E. Cannon, subject to the order of James Cannon," and had so continued in bank up to the time of his death.

Nor does possession of the deposit book by Mary, or her agent, affect the result. Its delivery to her did not operate as a delivery to her of the money nor deprive James of dominion and control over it. The delivery of the book did not constitute a delivery of the money, because its delivery could not be effected in that way. The assistant-treasurer of the bank said the only mode in which money could be changed from one person's account to another's in the bank "is by a payment of the one account and a new deposit in another account." And of this James was aware, for when he made a donation of certain money he had on deposit in another bank he adopted this plan. The proof is not sufficient to establish a perfected gift of the money to Mary by James in his lifetime. It must therefore be brought into his estate.

### A, B, AND THE SURVIVOR OF THEM, SUBJECT TO THE ORDER OF EITHER.

*Taylor v. Henry* (1878), 48 Md. 550.

*A opened an account "A, B and the survivor of them, subject to the order of either," and retained the book until his death, after which B got it from his trunk and drew the money.*

*Held: A retained dominion and control; the form of entry including the words "and the survivor," did not, of itself, import an actual present donation by A to B, nor divest A*

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*of control; and, from all the facts, was a mere device for A's convenience, whereunder B was A's agent to draw the money in a possible emergency; hence, there was no perfect or complete gift to B, nor was a trust created in B's favor. The money belongs to A's estate.*

On April 20, 1866, Joseph Henry, contemplating a voyage for his health, deposited \$1,850 in the Eutaw Savings Bank of Baltimore:

"Joseph Henry and Mary Henry, his mother, and the survivor of them, subject to the order of either."

Afterwards Joseph went to the bank, accompanied by his sister, Margaret Taylor, had the name of his mother erased and that of his sister substituted, and the account changed thus:

"Joseph Henry, Margaret Taylor, and the survivor of them, subject to the order of either."

Two months later Joseph drew out \$50 leaving \$1,800. He died September 28, 1866, and thereafter Margaret obtained the book from his trunk where it had been constantly kept and drew the entire balance from the bank.

Joseph had been very anxious about the care and support of his aged mother, who survived him. He made some provision for her support during his lifetime, and was anxious that she should be provided for after his death. On July 6, 1866, he made his will giving his mother \$400; his sister Eliza \$600, his sister Margaret Taylor, \$300, and \$50 to his uncle. He appointed no executor. The will was probated. Joseph had no other money or estate with which to pay the bequests in his will than the money on deposit in the savings bank.

Decree against Margaret that the money belonged to the estate of Joseph.

Held: What was the meaning and intention of Joseph in making the deposit in the form adopted, as gathered from the entry in the bank book and all the circumstances surrounding the deceased at the time? If the words

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"and the survivor of them" had been omitted in the entry, the case of *Murray v. Cannon*, 41 Md. 466, would be decisive in establishing that the entry in the bank book would not be sufficient evidence of a complete and perfected gift.

Do those words, taken in connection with those which precede and follow them in the entry, import a gift? They do not. To make such gift perfect and complete there must be an actual transfer of all right and dominion over the thing given and an acceptance by the donee or some competent person for him, and it is essential to delivery that it should transfer the property at once and completely; if it has reference to a future time to operate, it is but a promise without consideration, and unenforceable. Until the gift is thus made perfect, a *locus penitentiae* remains and the owner may make any other disposal of it. Here the deposit was in the joint names of the deceased and the sister and the survivor, but subject to the order of either, and having thus retained the power to draw out the money, the depositor did not divest himself of dominion and control. He could have drawn out every dollar the day after the deposit.

The only evidence relied on to support the supposed gift is the form of entry. But there are no terms in the entry that import of themselves an actual, present donation by brother to sister; and the dominion retained by the brother enabled him to displace and entirely destroy all power conferred upon the sister in respect of the fund. As the mother's name had been erased and the sister's inserted, so the sister's name could have been erased without the slightest question of the brother's right to do so. The sister never exercised any power or control over the fund during the brother's life; only after his death did she attempt to assert right and dominion over it; and then by the supposed right of survivorship.

Nor can the sister's claim be sustained upon any prin-

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ciple of trust. Where the donor retains legal dominion, but fully and completely declares himself to be a trustee, the declaration of trust is considered as equivalent to an actual transfer of the legal interest, and if the transaction by which the trust is created be complete it will not be invalid for want of consideration. But for the purpose of establishing such trust, the evidence must be clear and unmistakable both of the intent and the execution of that intent. In this case, however, there is no evidence, apart from the entry itself, that reasonably tends to establish such trust. Looking to all the circumstances the presumption is strongly against any intent on the part of the deceased that he designed the deposit exclusively for his sister.

The conclusion from all the facts is that the form of entry was nothing more than a device or arrangement by the deceased to subserve a matter of convenience to himself; and that the sister was simply constituted an agent with power to draw money from the bank to meet some supposed emergency that might possibly arise in his absence from home.

### A, B, AND THE SURVIVOR, SUBJECT TO THE ORDER OF EITHER.

Dougherty v. Moore, (1889), 71 Md. 248, 18 Atl. Rep. 35.

*A deposited money payable to "A and B and the survivor, subject to the order of either." Afterwards A caused an entry "I give to B all the money credited or to be credited in this book and direct same to be paid to her." B was wife of A. A made subsequent deposits and both thereafter withdrew money on presenting the book. On A's death,*

*Held, A retained dominion and there was no gift to B. The entries did not constitute a present gift, and as a testamentary disposition they were invalid.*

Lawrence McDonald, in 1868, opened an account in the Eutaw Savings Bank as follows:

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“Lawrence McDonald, Sarah McDonald, and the survivor, subject to the order of either.”

On January 4, 1876, the following entry was also made:

“In consideration of my natural love and affection for my wife, Sarah McDonald, I give to her all of the money belonging to me credited or to be credited in this book, and I direct the same be paid to her and her receipt shall be good for the same.

Lawrence McDonald.”

After these entries McDonald continued to make deposits and withdrawals; his wife also drew money from time to time upon presenting the pass book. Husband and wife died on the same day, the wife surviving the husband about an hour. Decree that the money belongs to the estate of the husband.

Held: Was there a valid gift by husband to wife? There was no actual delivery of the money by husband to wife. Were the acts of the husband in a legal sense, equivalent to an actual delivery of the money?

In some states it has been held that an assignment in writing and delivery of a pass book with intention to vest immediate title, will vest in the donee a valid title to the money. But here, it is unnecessary to decide this, for there was no delivery by husband to wife of the pass book with intention on his part of renouncing all interest in the deposits and transferring to her absolute title to the same. During his life, he continued to draw and use the money, showing beyond question that he never meant to relinquish his right over the deposits. If there was a complete gift to the wife, then he had no right to appropriate it to his own use. But there can be no gift so long as the donor retains control and dominion. A mere promise to give, however explicit, is insufficient, as it is a promise without consideration and cannot be enforced.

Although the husband did not mean to relinquish his



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right to the money during his life, he did mean that whatever remained in bank at his death should go to his wife if she survived him. But these entries cannot operate as a testamentary disposition of property because they are not executed as the law requires.

There was no valid gift by husband to wife.

A AND B, SUBJECT TO ORDER OF EITHER; BALANCE AT DEATH OF EITHER TO BELONG TO SURVIVOR.

Metropolitan Savings Bank v. Murphy, (1896), 82 Md. 314, 33 Atl. Rep. 640.

*A opened an account, "A and B, subject to order of either; balance at death of either to belong to survivor." B was A's wife. A made subsequent deposits, but no withdrawals. Upon A's death, the bank paid the balance to B.*

*Held: Payment to B was authorized. A did not retain dominion and control, but contracted with the bank that the money should be subject to order of either A or B, and should "belong" to the survivor, and the bank merely carried out its contract by paying B after A's death.*

Michael Murphy deposited a sum of money in a savings bank in an account:

"Michael Murphy and Ann Murphy, subject to the order of either; the balance at the death of either to belong to the survivor."

He made additional deposits from time to time, but no money was withdrawn until after Murphy's death. Thereafter, the bank paid the money to Mrs. Murphy. In a suit by the administrator of Murphy, to recover the amount from the bank, there was a decree in the bank's favor.

Held: Had the bank authority in law to make the payment to Mrs. Murphy after the death of Murphy? Murphy's administrator claims the payment was unauthorized. In paying the money to Mrs. Murphy the bank carried out in good faith the strict letter of its con-

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tract. This is not a case where the husband retained possession and control of the account in bank and continued to draw therefrom such sums as his wants might indicate, as in *Dougherty v. Moore*, 71 Md. 248. Nor is the language controlling the ultimate disposition of the joint account in this case in any respects similar to that of *Dougherty v. Moore*.

The bank's instructions in opening the account were that said account shall be subject to the order of either husband or wife and that at the death of either the balance shall *belong* to the survivor. Nothing could be clearer than the object and intention of the parties to the contract in the language employed by them in opening the joint account. We entertain no doubt as to the legal effect and meaning of the entry at the head of the account. True, title was originally vested solely in the husband, and it was his privilege to make such disposition of the same as he thought proper. He had the indisputable right to enter into any contract with the bank that would accomplish his purpose in securing to his wife the protection which these savings deposits might give to her. The property in controversy consisted of deposits which by the direction and authority of the husband, assented to by the bank, were entered in its books to the credit of husband and wife, with the understanding and contract with the bank indorsed thereon as hereinbefore stated. The parties were capable of contracting, and having actually contracted, the law exacts fulfilment, which the bank has done; and we do not think, after it has fully executed its part of the contract, it ought now to be required to pay to the administrator of the husband, the money which it promised to pay, and had already paid, to the wife, unless some legal requirement can be established demanding its payment to the administrator.

This transaction partakes somewhat of the nature of an equitable assignment, looking to the interest of the

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parties rather than to matter of form, and the question of the survivorship depended solely upon some contingency. But looking at the controversy from whatever point we may, we think the bank paid rightly to the wife the balance standing to the joint credit of herself and husband at the time of his death.

### A AND B, SUBJECT TO THE ORDER OF EITHER OR THE SURVIVOR.

*Baker v. Hedrich*, (1897), 85 Md. 645, 37 Atl. Rep. 363.

In this case the deposit in this form was shown to be the property of B, the wife, and not of A, the husband, when deposited; hence when A died, it was adjudged that the money belonged to B, the surviving wife, as against the administrator of A; and the question of what was necessary to make a gift, did not enter.

### A AND B, JOINT OWNERS, PAYABLE TO ORDER OF EITHER OR THE SURVIVOR.

*Gorman v. Gorman*, (1898), 87 Md. 338, 39 Atl. Rep. 1038.

*A made a deposit entered "A and B, joint owners, payable to the order of either or the survivor." A always retained the book, made a will disposing of the fund in bank, and there were other facts showing no gift to B was intended. Upon A's death,*

*Held: A retained dominion and there was no gift to B. The technical, legal meaning of the words "joint owners," taken by themselves will not be accepted as decisive and as warranting the conclusion that they indicate a giving of joint ownership to B, as distinguished from agency with authority to draw, perfected by delivery of the money to the bank; but these words will be interpreted in connection with the entire language of the entry and in view of all the facts; and so interpreted, there was no intention by A to make B a joint owner, nor such delivery as is required to make a perfect gift.*

## DECISIONS

*If, however, the bank should pay B, after A's death, according to the terms of the entry, it might be protected.*

Theresa McConnell went with her niece Maggie S. Gorman, to the Savings Bank of Baltimore and opened an account:

"Theresa McConnell and Maggie S. Gorman, joint owners, payable to the order of either or the survivor."

The niece asked her aunt to let her see the bank book, but was refused permission. Before her death the aunt made a will disposing of the fund in bank. The bank's teller testified it was the custom to call the attention of depositors to the words "payable to the order of either or the survivor" and to make the fact known to them that in case one dies, the other can get it—provided the survivor produced the book. Some such statement was made to the aunt when this deposit was made for when she was leaving the bank she remarked to her niece: "Wasn't that a funny remark the clerk made, saying that you could draw the money. I don't see how you can draw it, while I have the book." The aunt retained possession of the book until her death. There were other facts in the case, the tendency of all being to show that no gift to the niece was intended.

Upon the death of the aunt it was decreed the money belonged to her estate, and not to the niece.

Held: While the language of the entry is different from that used in other cases, a careful consideration of the entry itself and all circumstances in the case forces the conclusion that it was not the intention of the aunt to make the niece a joint owner, and, secondly, if any such intention ever existed, there was no such delivery of the money as is required to make a perfect gift.

The whole contention on behalf of the niece, hinges upon the words "joint owners." The circumstances surrounding the transaction, so far from establishing an intent to make a gift, show the contrary. But the con-

## BANK DEPOSITS

tention is that the language used in the entry, irrespective of the facts and circumstances under which it was made, together with the deposit of the money, operated to make a perfect gift; that the words "joint owners" mean exactly what they imply, namely, ownership, and not mere agency with authority to draw. But the question is not as to the meaning of the words "joint owners" in themselves and apart from the connection in which they are used in the entry. True, these words have an ascertained legal meaning in themselves; yet they are not used here in the definite legal sense imputed to them. In order to ascertain the depositor's intention as manifested by the entry, not only the entry itself, but all the circumstances surrounding her at the time should be considered. Whatever the legal effect of the words "joint owners" generally, it is impossible to give them the broad signification claimed for them, in the connection in which they are used in this case, and with the controlling fact admitted that the aunt always held possession of the bank book. If it be conceded that the case is to be decided upon the legal, technical meaning of the words "joint owners" and that the niece thereby became a joint owner, pure and simple, without any limitation whatever, then it might be conceded that *Murray v. Cannon and Gardner v. Merritt*, would sustain the theory that delivery to the bank was a delivery to the niece and the gift complete. But we cannot close our eyes to all the other evidence in the case and give effect to two words alone in the entry.

In this case there is no question, as in *Murphy v. Metropolitan Savings Bank*, 87 Md. 338, as to the rights of the bank under the contract of deposit, but the object is to ascertain who is the legal and true owner of the fund. As between depositor and bank, perhaps the entry in the bank-book might be conclusive, and if the bank had paid the money according to the terms of the entry it might be protected; but as between the depositor or her executor

## DECISIONS

and the niece, the entry is not conclusive. It is a fact to be considered in connection with the other circumstances of the case to determine the donor's intention. What we decided in *Murphy v. Metropolitan Bank*, 87 Md. 338, was that under the facts of that case, and because of the express language of the entry that the balance should *belong* to the survivor, the bank was right in paying it to the survivor.

The contention here that by virtue of the language of the entry there was, at the time it was made, a full, complete and legal transfer to the niece of a joint interest and such a delivery as was necessary to make a perfect gift, cannot be sustained.

A AND B, JOINT OWNERS, PAYABLE TO THE ORDER OF  
EITHER OR THE SURVIVOR.

*Whalen v. Milholland*, (1899), 89 Md., 199, 43 Atl. Rep. 45.

*A opened an account, "A and B, payable to the order of either or the survivor." Later the bank added "joint owners," without A's knowledge or consent. A always retained the book, except that B claimed delivery thereof to her by A a few hours before A's death, which claim was not established by the facts.*

*Held: A retained dominion and control; the words "joint owners," even if added with A's consent, were not sufficient, of themselves, to convert ownership from A to A and B, and the other facts do not lead to such a result, but show that A's intention was that B should have the money if she survived A, which attempted testamentary disposition cannot be effected by such a form of entry. Hence, the deposit belongs to A's estate.*

*Further held: Assuming the deposit had been made by A in the name of A and B, as joint owners, payable to the order of either or the survivor, A originally owning the money, and thereafter A had deliberately given the book to B, with*

## BANK DEPOSITS

*the intention of donating the fund to her, and reserved no control over it herself, upon the acceptance of the gift by B, there would have been a perfected gift of the money, vesting the ownership and right to possession in B. But the circumstances fail to show delivery of the book by A to B.*

On May 6, 1891, Elizabeth O'Neill deposited a sum of her own money as follows:

"Elizabeth O'Neill and Mary Whalen; payable to the order of either or the survivor."

Mary was sister of Elizabeth. Later the words "joint owners" were added after the name of Mary Whalen when that form was adopted by the bank. Elizabeth could not read and there was nothing to show that she knew of these words being added. Deposits and withdrawals were made from time to time by Elizabeth. She retained possession of the bank book until her death, the court finding that a contention of Mrs. Whalen that it was delivered to her a few hours before Elizabeth died was not well founded.

Decree awarding fund to executor of Elizabeth.

Held: The original entry was wholly insufficient to effect a transfer and delivery of the funds to Mrs. Whalen or to place them beyond the power of Miss O'Neill to recall. By this form of entry Miss O'Neill did not divest herself of dominion over the deposit, but retained undoubted power to draw the money out of the bank. Hence there was no perfected gift to Mrs. Whalen by the form of the entry as it then stood.

The words "joint owners," of themselves, whatever their technical import, did not operate to vest one-half ownership in Mary when, under the terms of the very paper in which they were used, Elizabeth retained such dominion over the fund deposited that she could at any moment withdraw the whole of it. Particularly so when Elizabeth retained the passbook, which, under the bank's

## DECISIONS

rules, must be presented to draw the money. Furthermore, in this case, the words "joint owners" were not inserted at the instance of Miss O'Neill, but merely because the bank had adopted that form; hence they have no weight in this case.

While there was evidence that Miss O'Neill intended the fund to belong to her sister should the latter survive her, the book entry was ineffectual to accomplish that object, not constituting a valid gift and, for obvious reasons, not operating as a testamentary disposition. The money therefore belonged to Elizabeth at the time of her death, unless the alleged delivery of the book to Mrs. Whalen, or the entry and delivery, constituted a valid donation.

Assuming for the moment that the evidence satisfactorily establishes a delivery of the book, the question is presented whether the gift and delivery of a bank book containing the entry that this one embodies, including the words "joint owners," is in law a delivery of the money credited in the book. Upon this point the court holds that if this deposit had been made by Miss O'Neill in her own and her sister's names as joint owners, payable to the order of either or the survivor, though all the money was in fact the property of Miss O'Neill, and if thereafter she had deliberately given the book to her sister with the intention of donating the fund to her, and reserved no control over it herself; upon the acceptance of that gift by Mrs. Whalen, there would have been a perfected gift of the money, vesting the ownership thereof in Mrs. Whalen and entitling her to the possession of it.

But the circumstances in the case fail to show a delivery of the book by Miss O'Neill to Mrs. Whalen, the evidence adduced to prove the gift of the bank book being too inconclusive and vague to support her claim.



## BANK DEPOSITS

### MASSACHUSETTS.

#### A, TRUSTEE FOR B.

Brabrook v. Boston Five Cents Savings Bank, (1870), 104 Mass. 228.

*Where A deposited money "A in trust for B," A retaining the bank book until his death, and never declaring to B that the money was hers, and the facts showed that A did not intend the money for B, but made the deposit in this form to evade a by-law of the bank limiting the amount of deposit in any one name, there was no creation of a trust in B's favor, and upon A's death his executor, and not B, was entitled to the deposit.*

On July 10, 1860, David Knowles gave to John T. Dingley \$3,000 to deposit for him in defendant bank. Dingley informed Knowles that the by-laws of the bank did not allow so large a deposit in the name of one person but that he could deposit it in the names of his children for himself. Thereupon Dingley by direction of Knowles, deposited the \$3,000 in equal proportions in the name of David Knowles and his three children, one of whom is the plaintiff, Eliza H. Brabrook, then Eliza H. Knowles, and took four books from the bank. Dingley informed Knowles of what he had done and showed him the books and he approved of the same. The entry in the bank and the pass-books was as follows:

"David Knowles, trustee for Eliza Knowles."

The deposit remained with the bank unchanged until the death of Knowles, except that interest was from time to time drawn by Dingley, by direction of Knowles, so as to keep the whole sum below \$1,000.

Dingley was appointed executor of Knowles and as such claimed the funds in the bank's hands as belonging to his estate. All four of the bank books remained in the possession of Dingley until the death of Knowles, and have since been in his possession as executor.

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This action is by Eliza H. Brabrook, one of the daughters, against the bank claiming that the sum deposited in the account "David Knowles trustee for Eliza Knowles" was deposited as trustee for her.

Held: Plaintiff shows no right to the deposit. The money belonged to David Knowles in his own right. He was not in fact trustee for Eliza otherwise than by the form of the deposit. The voucher for the deposit, without the production of which, according to the conditions under which it was made, it could not be withdrawn, was never delivered to her, but retained exclusively in his own hands. The whole transaction was his own voluntary act to which she was in no way a party or privy. There was no declaration made to her or to be communicated to her of any intention that the money should be hers.

Even if the form of the deposit is to be taken as conclusive proof of the existence of such intention in his mind, the execution of that intent was not so far complete as to operate to pass the title. Knowledge of the gift on the part of the donee at the time it is made is not essential, it is true, in order that it may take effect. If the act of transfer be complete on the part of the donor, subsequent acceptance by the donee, before revocation, will be sufficient, but there must be some act of delivery out of the possession of the donor, for the purpose and with the intent that the title shall thereby pass.

The deposit by Knowles was entered in his own name and to his own credit. The legal title and right to draw money so deposited remains with the depositor. There was no direction or authority for the bank to pay it to the plaintiff. The form of the deposit does not imply such an intent, or no obligation or right on the part of the bank so to pay it over. The declaration of trust is evidence that Knowles, the depositor, held the fund in some manner for the benefit of the person named as *cestui que*

## BANK DEPOSITS

*trust*, but it did not, of itself, transfer to her the possession nor the right of possession, nor constitute a legal right in her.

Assuming in this case that the deposit and declaration of trust was a sufficient act of delivery to pass the title, if such were the intent, the facts show clearly that such was not the intent of the depositor.

On the contrary it would appear that it was the intention of Knowles to deposit the whole money as his own, and that the form of deposit was adopted for the sole purpose of avoiding a by-law of the bank and a provision of the statute limiting the amount that could be received from any one depositor to \$1,000.

Plaintiff contended that the written declaration of trust was conclusive and objected to the admission of evidence to the contrary, because it violates the rule excluding parol evidence to contradict or vary the terms of a written instrument. But the court points out that such rule applies to suits upon the instrument and between the parties to it and that plaintiff is no party to the contract between Knowles and the bank.

For similar reasons the plaintiff cannot set up as an estoppel, against the bank, or Knowles, the by-law of the bank providing that "Any depositor may designate at the time of making the deposit the period for which he is desirous the same shall remain in the bank and the person for whose benefit the same is made; and such depositor and his legal representative shall be bound by such conditions by him voluntarily annexed to his deposit."

Plaintiff is a stranger to that contract, and does not claim under it. If upon due presentation of the book the money had been paid to her, this provision might have availed the bank as a defense against the depositor, or his legal representatives. But it can have no force as an estoppel except when so set up by the bank. Nor can plaintiff avail herself of the fact that the alleged purpose

## DECISIONS

of Knowles in making the deposit in such form was an evasion of law. Whatever the effect of this, it confers no rights upon the plaintiff.

The plaintiff's right to recover depends upon proof of an intent to make an absolute gift of this money to her. The bank is not precluded from disproving that intent because the evidence by which it is to be disproved tends also to show an unlawful act or purpose in a transaction between the bank and Knowles.

Plaintiff non-suited.

### A, TRUSTEE FOR B.

Clark v. Clark, (1871), 108 Mass. 522.

*Where A made a deposit "A in trust for B," retaining the deposit book until her death, and never informing B of the deposit, held that no trust was created in favor of B, and A's administrator was entitled to the deposit. In this case, the court said that even if A intended to create a trust for B, this was not sufficient, where A did not do what was necessary to carry the intent into effect.*

Betsy Abbot deposited in the Boston Five Cent Savings Bank money belonging to herself in the name of "Betsy Abbot, trustee for Ann Clark."

Betsy afterwards died, having retained the book of deposit until her death, and until then Ann Clark, who was her half-sister, had no notice of the deposit. A by-law of the bank provided that "No person shall receive any part of his principal or interest without producing the original book that such payments may be entered therein."

This suit was brought against Ann Clark, in which the bank was summoned as trustee, and the administrator of Betsy Abbot appeared as claimant of the deposit. Evidence was offered of the intent of Betsy Abbot to create a trust in favor of Ann Clark; but the judge ruled that even if such intent were proved, Ann Clark could not recover, and directed judgment for the plaintiff.

## BANK DEPOSITS

Held: Even if it could be proved that Betsy Abbot intended to create a trust she did not do what was necessary to carry the intent into effect. Ann Clark was not a party to the transaction and never acquired any title to the money; and upon the death of Betsy Abbot it passed to her administrator. The case of *Brabrook v. Boston Five Cent Savings Bank*, 104 Mass. 228, is decisive in this case.

### A, TRUSTEE.

*Powers v. Provident Inst. for Savings*, (1878), 124 Mass. 377.

*A depositor opened an account "A, Trustee," and afterwards lost the book. Upon his death, his administrator claimed the deposit, and the bank was required to pay it over, the mere fact of opening an account in this form being insufficient to make out a prima facie case of the existence of a trust, which the administrator would have to rebut to obtain the money.*

John Marley took a sum of money from his individual account in the savings bank and opened a new account in the name of

"John Marley, Trust."

During Marley's lifetime the deposit book was lost or stolen from his possession and the bank was notified by Marley, after the loss of the book, that it had not been transferred and that it was his property. Upon Marley's death, his administrator tendered to the bank a bond of indemnity against any claim arising from the production of the missing deposit book, or from any claim of a *cestui que trust*, but the bank declined to pay the amount. No demand was ever made upon the bank, or upon the administrator, by any party claiming to be a *cestui que trust* of the deposit.

This action was brought against the bank by the administrator of Marley to recover the deposit and resulted in a verdict in his favor.

## DECISIONS

Held: The mere fact that the money deposited by Marley was entered to the credit of "John Marley, Trust," was not conclusive evidence that he held it subject to a trust in favor of some other person, nor that some other person had any interest in it. Even if the deposit had been made and entered "In trust for A B," it would have been open to proof by parol evidence that the money was in fact absolutely owned by the depositor, and thus deposited for convenience and without intent to give A B any right to, or interest in, it whatever.

This seems to have been recognized by the bank; and it asked the court to rule, that, on the evidence offered by the administrator, a prima facie case of the existence of a trust had been made out, which was not rebutted by the other evidence offered. But from the facts, a jury would be warranted in finding that the money was Marley's absolutely, not charged with any trust, and deposited in the name "John Marley, Trust," for his own convenience merely.

### A IN TRUST FOR B.

Gerrish v. New Bedford Inst. for Sav., (1879), 128 Mass. 159.

*A deposited money "A in trust for B," and retained the pass-book until his death. A told B that he had put this money in bank for him; that he wanted to draw the interest during his life, and after he was gone B was to have the money. Held, that A's statement fairly implied that he intended to give B an immediate equitable title in the principal, reserving only the income for life. This defined the nature of the trust and showed a testamentary disposition was not intended. Notice to B of the existence of the trust was decisive of the question of intention, and takes the place of that delivery necessary to perfect a gift of personal property. The facts warrant the conclusion that there was the creation of a completed trust in B's favor.*

## BANK DEPOSITS

John B. Dornin, after depositing in the New Bedford Institution for Savings in his own name and in his own account, all that he was allowed to by the rules of the bank, made three other deposits as trustee, one of which was in trust for his only son by name, the others in trust for his two grand daughters by name. For these three deposits he took separate bank books containing entries of the same which, after his death, were found among his effects, having never been delivered to the parties named or to anyone else for them. He continued, while living, to collect, receipt for and use, as his own, all dividends upon these deposits.

A by-law of the bank provided that " No person shall receive any part of the principal or interest without producing the original book in order that such payments may be entered thereon " and another by-law declared that " Any depositor at the time of making his deposit, may designate the person for whose benefit the same is made which shall be binding on his legal representatives."

By chapter 203, sec. 20, Mass. Statutes of 1876, it was also provided that when a deposit is made in trust, the name and residence of the person for whom it is made shall be disclosed and the deposit shall be credited to the depositor as trustee of such person; and when no other notice of the terms of the trust shall have been given in writing, the deposit or any part thereof may be paid, in the event of the death of the trustee, to the person for whom the same was made.

In this action by the executor of Dornin, against the savings bank to recover the deposits, the son and grandchildren were made defendants under the provisions of section 19 of the statute cited, and appeared as claimants of the money. They offered to prove, in addition to the above facts, that the testator had said to each of them at different times " that he had put this money in the bank for them; that he wanted to draw the interest during his

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lifetime; and after he was gone they were to have the money." This evidence was rejected by the judge at the trial because, in his opinion, the testator had not done what was necessary to create a trust.

The supreme court grants a new trial because, upon all the evidence, including that which was excluded, but which should have been admitted, a majority of the court is of opinion that a jury would be justified in finding that the testator had fully constituted himself a trustee for these claimants.

The court said in substance: It is not enough that the testator manifest an intention to create the trust and make the gift at some future time. The act of transfer relied on must be fully and completely executed. In this case, there is no formal written declaration of trust. But no particular form of words is required to create a trust, and it is enough, if the property be personal, if it be unequivocally declared orally. When the trust is thus created, it is effectual to transfer the beneficial interest and operates as a gift perfected by delivery.

In the case at bar the claimants offered to prove declarations of the testator which fairly implied that he intended to give them an immediate equitable title in the principal fund, reserving only the income for life. These declarations define the nature of the trust and show that a testamentary disposition of the property was not intended.

This evidence was rejected because the judge thought the testator had not done what was necessary to create a trust. But whether he had done enough depended on whether his conduct and declarations manifested a completed and executed intention in regard to it.

Notice to the donee is indeed not necessary when other acts or declarations of the donor are sufficient and complete in themselves; but where the transaction is capable of two interpretations and the settlement is merely voluntary, it is plain that notice given by the donor



## BANK DEPOSITS

to the donee of the existence of the trust, would in most cases be decisive on the question of intention. It takes the place of that delivery which is necessary to perfect a gift of personal property. It is not only satisfactory evidence of an executed intention but it is a declaration in the nature of an action necessary to complete the transaction and create the trust.

### A IN TRUST FOR B.

Nutt v. Morse, (1886), 142 Mass. 1, 6 N. E. Rep. 763.

*A deposited money "in trust for B," retaining the bank book and telling B that "while I live this is mine to do what I have in mind to with; after I die, it is yours." Held: A's estate and not B was entitled to the money, upon A's death. There was no perfected gift to B, but the money remained A's and the transaction was intended to be in the nature of a testamentary disposition and an attempted evasion of the statute of wills.*

On April 5, 1873, Calvin Morse deposited \$1,000 in the Natick Five Cent Savings Bank in the name of

"Calvin Morse, Tr. for E. S. Hayes."

Hayes was a nephew of Morse. In May, 1873, Morse gave the book to Hayes who then, and afterwards until the time of Morse's death, had the care of his books and papers as his business assistant, and said: "Here is a book; I want you to take care of it; if you outlive me, it is yours."

On June 13, 1873, Morse deposited \$4,000 in the same bank taking out four books for \$1,000 each in the following names:

"Calvin Morse, in trust for Rufus Morse."

"Calvin Morse, in trust for Caroline Morse."

"Calvin Morse, in trust for Maria Hayes."

"Calvin Morse, in trust for Edgar S. Hayes."

Rufus Morse was a brother, Caroline Morse and Maria Hayes were sisters of Calvin Morse, and Edgar S. Hayes

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was a son of Maria and nephew of Calvin Morse as above stated.

These four books, similarly to the first book, were put in care of Edgar S. Hayes. Morse informed each of the four persons that he had deposited these sums. To Maria Hayes he said: "I can control this while I live, but if I die without drawing it, it is yours." To Rufus and Caroline Morse he said that he had put in these sums in trust; that he could do what he had a mind to with the money while he lived, but that it was theirs after he died.

Calvin Morse knew at the time of these deposits that he could not draw interest on any sum over \$1,000. On November 15, 1873, Calvin Morse drew out the interest on these several deposits and on May 5, 1874, Edgar S. Hayes, under the direction of Morse, drew the interest on the deposits for which he accounted to Calvin Morse. At this time Calvin Morse was informed that, by a change of the statutes, the several deposits could be allowed to accumulate by interest to the amount of \$1,600. He then directed Hayes to let the interest accumulate. Hayes remarked to him that then he, Hayes, would get more; to which Morse replied, "What do you care; I shouldn't think you would find fault with that."

About a year before his death, Calvin Morse said that he wouldn't make a will; that he had provided for his brother and sisters and nephew by depositing money in the savings bank. The night before he died, Calvin Morse said to his brother and sisters, "When I am gone, you take these books and transfer the money to your own names and say nothing to nobody about it."

Calvin Morse died March 30, 1881. The deposit books remained in the possession of Edgar S. Hayes until May 8, 1882, when he withdrew from the bank the two deposits made in trust for himself. Hayes retained possession of the three other deposit books running in trust

## BANK DEPOSITS

for Rufus and Caroline Morse and Maria Hayes until November, 1883, when he delivered them to the administrator of Calvin Morse.

The administrator brought this bill in equity to obtain the instruction of the court as to the disposition of the deposits.

Held: The funds in this case are claimed by a brother, two sisters and a nephew of the deceased upon the ground that they were given to them severally by him during his lifetime. The claims of each stand upon the same grounds substantially, there being no material difference in the evidence as to each alleged gift. Upon the facts, it is clear there was no perfected gift to either of the claimants. Calvin Morse retained the entire dominion and control of the funds, both principal and interest, during his life and the facts show conclusively that he intended that no title to, or interest in, the funds should pass to the several claimants until after his death. The transaction was intended to be in the nature of a testamentary disposition and was an attempted evasion of the statute of wills. It follows that the funds remained the property of the depositor at the time of his death, and belong to his administrator to be divided according to the statute of distribution.

### A, TRUSTEE FOR B.

Alger v. North End Savings Bank, (1888), 146 Mass. 418, 15 N. E. Rep. 916.

*A deposited money as "trustee for B," retaining the bank book and telling B, "I put that money for you in the bank, it is yours." Held, A's statement constituted a perfected gift to B, assented to by the latter, and upon A's death, B is entitled to the money as against the administrator of A.*

George C. Trumbull deposited in the savings bank \$1,000 in the name of

"George C. Trumbull, trustee for Achsie J. Wood."

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Achsie J. Wood had been housekeeper for Trumbull and his wife for eleven years before his death. The bank book was retained by Trumbull and found by his administrator among his papers after his death. The evidence, in substance, was that Trumbull had told the beneficiary that "I put \$1,000 for you in the North End Savings Bank; that money is yours."

The administrator brought an action against the bank for the deposit and Achsie J. Wood intervened as claimant under Pub. St. C. 116, Sec. 31. There was a finding for the plaintiff and the Supreme Court of Massachusetts renders judgment in support of the finding.

Held: The question presented is whether there was evidence of a perfected gift by Trumbull of the sum thus deposited in his lifetime to Mrs. Wood, or whether it continued under the control and possession of Trumbull until his death, and was only intended to become the property of Mrs. Wood in the event that he should see fit to leave it undisturbed at the time of his death. If the deposit was of the latter character, it would be an attempt to make a testamentary disposition of the sum without observing the forms of law, and the administrator would be entitled to the possession of it.

The Pub. St. C. 116, Sec. 32, provides that when a deposit is made by one in trust for another, and when no other notice of the terms of the trust has been given in writing, the deposit may, in the event of the death of the trustee, be paid to the person for whom such deposit is made. But this is intended solely for the protection of the bank and the rights of those who deem themselves entitled to the deposit are not thereby affected as between themselves.

The difficulty in this case, as in similar cases where deposits have been made by one in his own name as trustee for another, is rather in the application of the law to the facts than in the principles which should govern.

## BANK DEPOSITS

While, if Trumbull retained the control over this fund until his death, intending that no title to, or interest in it, should pass until that time, there would have been no perfected gift, it is also true that if he deposited the money in bank, intending it to be at the same time a gift to Mrs. Wood, although he himself kept the deposit book, and informed her of it, and she assented to it, this would be equivalent to a delivery and an acceptance of a chattel on delivery and the gift would have been perfected.

The statements of the claimant, if believed, establish a perfected gift of the \$1,000, assented to by the plaintiff. They were made when the money is actually in bank and they assure the claimant, without qualification, that it is hers. There is no reason, as matter of law, why the court might not have placed confidence in them.

### A IN TRUST FOR B.

Parkham v. Suffolk Savings Bank for Seamen, (1890), 151 Mass. 218, 24 N. E. Rep. 43.

*A deposited a sum of money "in trust for B," retaining the pass-book. The evidence was conflicting whether B was ever informed of it. A, before making the deposit, already had the limit of deposit in his own name. A's administrator is held entitled to the deposit, as against B, the court saying that the form of the deposit was not conclusive of the existence of a trust, and if the judge was satisfied that B was never informed of the deposit, and that it was not intended for him, it hardly needed the explanation that A had the full limit on deposit in his own name when he made the deposit to warrant a rejection of B's claim and find for the administrator.*

William C. McCarthy deposited various sums, in all amounting to \$1,000, in the Suffolk Savings Bank in his own name, as trustee for Marcus McCarthy. The evidence was conflicting as to whether Marcus ever had any knowledge of the deposit until after the death of William.

## DECISIONS

William retained the pass-book and after his death it was turned over to his administrator by his housekeeper. Prior to making the deposits in question, William had deposited various sums in the Suffolk Savings Bank in his own name, in all aggregating \$1,000, which sums so remained on deposit at the time the sums put in the account as trustee for Marcus were deposited.

In an action by the administrator of William to recover the money in the bank, Marcus intervened as a claimant of the fund under Pub. St. C. 116, Sec. 31. There was a finding for the administrator which is upheld by the Supreme Court.

Held: The fact that the savings bank book designates William as trustee for the claimant is not conclusive of the existence of a trust. As it is a well known practice for people who have deposited in their own names the full amount allowed, to open new accounts ostensibly as trustees for others, but in fact for their own benefit, evidence that the intestate had deposited the full amount allowed to his own use was admissible as affording a possible explanation of the form adopted other than the intention to make a gift.

If the judge was satisfied that the money deposited did not belong to the claimant, and that the claimant was never informed of the deposit, it hardly needed the explanation of the form of the deposit to allow, if not to require, him to reject the claim and to find for the administrator.

### A IN TRUST FOR B.

Keniston v. Mayhew, (1897), 169 Mass. 166, 47 N. E. Rep. 612.

*A deposited a sum of money "in trust for B," and beyond the mere form of the deposit, nothing was shown to indicate an intention to give the deposit to B. Held, the facts are insufficient to establish a completed gift to B, and the money belongs to the estate of A.*

## BANK DEPOSITS

On May 6, 1890, Mary W. Sprague deposited \$3,000 in the New Bedford Institution for Savings, in three deposits of \$1,000 each one in her own name, one in the name of Mary W. Sprague in trust for Chas. Mayhew, and one in the name of Mary W. Sprague in trust for Nancy B. Mayhew. Afterwards Mrs. Sprague drew \$500 from the account which stood in her individual name but drew nothing from the other deposit accounts. Beyond the above facts, nothing was shown to indicate the purpose of putting one deposit in her own name as trustee for Charles Mayhew and one in her own name as trustee for Nancy B. Mayhew, and the parties agreed that the only act done by Mrs. Sprague indicating an intention to give the deposits to Chas. and Nancy B. was the form of deposit indicated by the book.

The court holds that the facts are insufficient to establish a completed gift and that Mrs. Sprague did not dispose of these deposits in her lifetime.

### A IN TRUST FOR B; PAYABLE IN CASE OF MY DEATH TO B.

Scriven v. North Easton Savings Bank, (1896), 166 Mass. 255, 44 N. E. Rep. 251.

*A deposited a sum of money "in trust for B; payable in case of my death to B." There was testimony that A told B to take the book, that the money was B's; that A reserved the right to draw a little when he saw fit, but B could have the money when he wanted it. The question was whether a valid trust was established in B's favor, or the facts showed an attempted testamentary disposition of the money. The jury having found a gift to B, the supreme court held the evidence sufficient to support it, and that B is entitled to the money as against the executor of A.*

On November 26, 1890, William Scriven, senior, personally made a deposit at the banking room in North Easton, and being unable to sign his name, made his mark so that the entry on the books was as follows:

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his

“ William Scriven X of Brockton, in trust for William  
mark

Scriven, of Lakeville, payable in case of my death to  
William Scriven, Jr., of Lakeville.”

Scriven of Lakeville was the son of Scriven of Brockton. Upon the death of William Scriven, senior, the bank held the money deposited for the owner, whoever he might be. It was claimed both by the son and the executor of the estate of the father.

The treasurer of the savings bank testified that at the time of the deposit Scriven, senior, said that he wanted his son to have it after his death. There was also testimony from the son that about four months after the deposit, the father told him to take the book, saying somebody might take it and that he should take it and his own book and give them to his (the son's) niece; that the son took it and looked it over, and saw about what it was and then said he would leave it there until it was called for, and that he left it with his father till he died; that he knew it was there for him; that his father reserved the right to draw out what he saw fit though he knew that he would only draw a little at a time; and his father told him that he could have it (the money) when he wanted it.

The supreme court holds that the question at issue is whether a valid trust had been established in the son's favor, so as to entitle him to the deposit, or whether what was done was an attempted testamentary disposition of it. That is a question of fact for the jury who were also told, in substance, that what was written in the bank book was not enough, but that in addition to that, the father must have indicated to the son in some form of language that the deposit then belonged to him, although he could not have it until his father's death, and that this was assented to by the son. The jury having returned a verdict for the son, the supreme court re-



## BANK DEPOSITS

viewing the testimony, upholds it, saying: " We cannot say on this testimony that the jury was not justified in finding a gift."

### B, SUBJECT TO ORDER OF A.

Eastman v. Woronoco Savings Bank, (1883), 136 Mass. 208.

*A made a deposit in B's name " subject to the order of A." A showed B the book, said he was going to give it to him, delivered it temporarily into B's possession, then said, as he had a safe, he would keep it for B, and signed a paper saying that the money was for B. After A's death B notified the bank, but the latter paid the money to A's administrator. Held, there was a completed gift to B, and the bank must pay the money over again to him.*

Parley Hutchins made a deposit in the Woronoco Savings Bank in the name of " Edwin B. Eastman; subject to the order of Parley Hutchins." A few days afterwards he asked Eastman to come to his house, showed him the book, said he was going to give it to him and delivered it temporarily into Eastman's possession; he then said he would keep the book for Eastman as he had a safe, and took it and put it in the safe; on the same day at Eastman's request, he signed and delivered to Eastman a paper certifying that the money was for him. Hutchins never drew the interest upon the deposit, but allowed it to accumulate, during his life, doing nothing to assert a personal ownership. After Hutchins' death, Eastman notified the bank that he claimed the deposit, but the bank thereafter paid it over to the administrators of Hutchins. Eastman brought this action against the bank for the deposit. The jury returned a verdict for the plaintiff and the supreme court holds the verdict was authorized, resulting in the bank having to pay the money a second time.

Held, 1. Upon the whole evidence, independently of

## DECISIONS

the stipulation that the deposit was subject to the order of Hutchins, the intention to make an absolute gift was clear and the jury were authorized to find a completed gift of the deposit in the savings bank by Hutchins to Eastman. The intention to make an absolute gift is more clearly to be inferred in this case than in *Gerrish v. New Bedford Inst.*, where such intention was found from evidence that the depositor took the bank books in his own name as trustee for several persons and never delivered them and continued to draw the interest himself during his life, saying to the persons named as *cestuis que trust* that he had put the money into the bank for them; that he wanted to draw the interest during his lifetime, and that after he was gone they were to have the money.

2. Does the stipulation which accompanied the making of the deposit that it should be subject to the order of Hutchins negative the theory of a gift? No gift could be inferred merely from the making of the deposit in Eastman's name, and plainly there was no completed gift on the day when the deposit was made, nor until the later day when the conversation took place between Hutchins and Eastman. It is possible that Hutchins at the time of making the deposit and taking the bank book may have had a different, or not fully formed, intention. Whatever construction should be arrived at merely from a perusal of the language of the stipulation that the money should be subject to Hutchins' order, in the absence of extrinsic facts, there is nothing in the existence of the stipulation which prevented Hutchins from afterwards making an absolute gift of the money to the person in whose name the deposit was made. In other words, the existence of the stipulation is not decisive of itself but is only one circumstance to be taken into consideration in determining whether, in view of all the evidence, there was at any stage of the transaction an intention on the part of the owner to divest himself of the property in question, and to

## BANK DEPOSITS

transfer it to another. Each case must be determined upon its own circumstances. We therefore conclude that the evidence would authorize the jury to find a completed gift to Eastman on the day of his conversation with Hutchins.

3. The bank contends that even if there was a completed gift it had no knowledge or notice thereof and cannot be affected thereby. But Eastman gave seasonable notice to the treasurer that he should claim the money. This notice was given after the death of Hutchins and six days before the bank paid the money to his administrators. The treasurer was already aware that the deposit was in Eastman's name and omitted to make any further inquiry as to Eastman's rights or as to the grounds of his claim. Under the statute of 1876, chapter 203, section 19, a simple and easy method was provided by which the bank could have protected itself by declining to pay the money to the administrators of the estate of Hutchins without a judicial determination of its liability, and by making Eastman a party defendant if an action were brought by the administrators against it. The bank appears to have deliberately assumed the responsibility of making payment to the administrators with knowledge of all such facts as it wished or cared to know.

### A AND B; PAYABLE TO EITHER OR SURVIVOR.

Noyes v. Inst. for Savings, (1895), 164 Mass. 583, 42 N. E. Rep. 103.

*A deposited a sum of money in the name of "A and B; payable to either or survivor." A kept the book in her possession during her life, and B had no knowledge of the deposit until after the death of A. Held, the money belonged to A's estate and not to B.*

Annie M. Pike, deposited in the Institution for Savings in Newburyport a sum of money. The account in the book was headed:

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"Annie M. Pike and Mary L. Hewitt, of Newburyport, payable to either or survivor."

Annie kept the deposit book in her possession during her life and it was found by her executors among her effects after her death. The book was never in the possession of Mary L. Hewitt and the latter had no knowledge of the deposit until after the death of Annie.

Held, upon these facts it was rightly held that the deposit remained the property of the original depositor and that her executors were entitled to recover.

### A AND B; PAYABLE TO EITHER OR THE SURVIVOR.

*Cogswell v. Newburyport Inst. for Savings*, (1896), 165 Mass. 524, 43 N. E. Rep. 296.

*A deposited a sum of money in an account headed "A and B; payable to either or the survivor." Upon conflicting evidence as to a gift, it was found that A deposited the money in this form as she had the full limit in her own name. Held, no gift to B, and A's estate is entitled to the money.*

Margaret McCormick deposited money, and the account in the savings bank was headed:

"Margaret McCormick and Ellen Dockery, payable to either or the survivor."

Upon the death of Margaret, this action was brought by her administrator against the bank and Ellen to determine the ownership of the deposit.

There was evidence at the trial that the deposit was made in the name of the deceased and Ellen for the reason that the deceased had already a deposit of the full amount upon which she could be allowed interest.

The claimant, Ellen Dockery, sister of the deceased, testified that she knew of the book for more than nine years; that when the deceased was at her house in Boston she gave the book "to me to understand that the money was there;" that "she said the money was put in there to be drawn by her or me;" that Ellen was to take the

## BANK DEPOSITS

number of the book so that if anything happened to Margaret, Ellen would have the number; that the husband of Ellen took the number and that the book she thought was kept in the valise of Margaret.

Thomas Dockery, husband of Ellen, testified that when his wife brought in the book he opened it and took the number and that the last time the deceased was at his house, she said: "In case his wife could not get her money she (his wife) could go to Ipswich and get that book and go to Newburyport and get the money."

To contradict his testimony Mrs. Ryan, another sister of the deceased, testified that Thomas Dockery said to her "that it was too bad that Margaret lost her money, and I asked how much and he said he did not know; and I asked him how come he to find out, and he says he looked in her bank \* \* \* in her valise; he says she had not got much now; I says 'how do you know?' He says 'I looked in her valise and I seen her bank book.'"

The judge found that there was no gift of the bank book by Margaret to Ellen, and the supreme court upholds the finding, saying:

1. The evidence as to the statement of the claimant's husband to Mrs. Ryan about the deposit book was admissible as tending to contradict his testimony that he obtained his knowledge of the book by seeing it in the claimant's possession.

2. The evidence justified a finding that the deposit was made in the names of the deceased and of the claimant for the reason that the deceased had already a deposit of the full amount upon which she could be allowed interest, and that there was no gift to the claimant.

**B; INTEREST TO BE PAID ON ORDER OF A—PRINCIPAL TO BE DRAWN BY B AFTER DECEASE OF A.**

Sherman v. New Bedford Five Cents Sav. Bank, (1884), 138 Mass. 581.

## DECISIONS

*Where A made a deposit in the form shown above, and always retained pass-book, B not knowing of it until after A's death, it is held there was no perfected gift or trust to B, and the money belonged to A's estate. The form of the deposit, alone, was insufficient as a gift or trust to B, without delivery of the book or a sufficient declaration of trust to B, or other act between A and B to perfect the gift.*

Urial Sherman made a deposit of his own money in the New Bedford Five Cent Savings Bank in the name of "The First Central Congregational Society of Rochester" with the following condition annexed: "Interest to be paid on order of Urial Sherman. Principal to be drawn by the board of managers of said church after decease of Urial Sherman."

Sherman always retained the pass-book and never had any communication with the Society with regard to the deposit and the latter did not know of it until after Sherman's death. The by-laws of the bank signed by Sherman provided that money deposited should be drawn out only by the depositor, or some person by him legally authorized, and that no payment should be made to any person without the production of the pass-book. They also provided that any depositor might designate at the time of making the deposit, the period for which he desired the sum should remain and the person for whose benefit it was made; and should be bound by such condition annexed to his deposit.

Upon Sherman's death, his executor brought an action against the bank for the deposit and the Society intervened as a claimant of the fund under Pub. St. C. 116, Sec. 31, the action thereupon becoming a proceeding between the plaintiff and the claimant to determine to which of them the fund belonged. The trial judge directed the jury to return a verdict for the claimant. The Supreme Court, reviewing the case, directs a contrary judgment for the plaintiff.

## BANK DEPOSITS

Held: The money deposited belonged to Sherman and the fund continued to be his unless he made a gift of it to the claimant when it was deposited. To constitute a gift there must have been a transfer of the fund to the claimant, or at least a transfer of it to the depositor as trustee for the claimant.

In this case there was no transfer of the fund and no perfected gift of it to the claimant. The depositor, having signed the agreement, was affected with notice of the by-laws of the bank and received and kept in his possession the deposit book. He never had any communication with the claimant respecting the deposit and the latter did not know thereof until after the depositor's death. The only contract made was between depositor and bank. The form of the deposit and the conditions annexed were parts of that contract and in some respects modified it; but as regards the claimant they are nothing more than declarations of the depositor, competent only upon the question of his intention.

The deposit, of itself, gives no right to the claimant. It is matter merely between the depositor and the bank. If by the delivery of the book, or a sufficient declaration of trust, or other act between the depositor and claimant, the latter should acquire a right, the form of the deposit would estop the depositor, as against the bank, from denying that right. The delivery of the book, or the other act, is the voluntary and efficient act which perfects the gift; until that is done, even if the intention is manifested, there can be no gift which will give legal or equitable rights.

But no inference can be drawn from the form or circumstances of the deposit, that the depositor intended to give to the claimant any right or interest in the fund to take effect during his own life and deprive him of the dominion and control of the property, and prevent him from revoking the gift.

## DECISIONS

The extraneous evidence put in by the plaintiff, against the objection of the claimant, does not tend to prove a perfected gift or a trust, or an intention that any present right should pass to the donee. On the contrary its whole tendency is to show that the intention of the donor was that the gift should not take effect until after his death and that it was intended to be in the nature of a testamentary disposition. As tending to prove this, the evidence, if competent, is unnecessary and immaterial. Whether that was or was not the intention, there was no trust or perfected gift shown; the fund remains the property of the depositor and the plaintiff, his executor, is entitled to it.

### A IN TRUST FOR B.

*Jewett v. Shattuck*, (1878), 124 Mass. 590.

*A mere deposit by one person in trust for another does not create a valid trust.*

In 1851 a married woman opened an account as trustee for her foster child, the account being entitled "Sarah Gray, trustee for Alice Gray." The depositor retained the book until the time of her death and Alice Gray never had any knowledge of the deposit until after the depositor's death. On these facts it was held that no trust had been created and that the fund belonged to the depositor's estate.

### A IN TRUST FOR B.

*Cleveland v. Hampden Savings Bank*, (1902), 182 Mass. 110, 65 N. E. Rep. 27.

*The creation of a bank deposit trust depends upon the intent of the depositor.*

Abbie M. Cleveland claimed to be entitled to three savings bank accounts opened by Sarah Davis in her name in trust for the claimant. In one instance the claimant's correct middle initial was used. An account



## BANK DEPOSITS

in the Springfield Institution for Savings was entitled "Sarah Davis in trust for Abbie E. Cleveland," and one in the Hampden Savings Bank was entitled "Sarah Davis in trust for Abbie V. Cleveland." The depositor never communicated her intent to Abbie Cleveland and always retained the deposit books. Shortly before her death she showed one of the books to her attorney and told him she did not intend to make any gifts outside her will and that she would go to the bank, although it did not appear that she did so. Just before her death she directed that the books be delivered to her attorney. The will which she made would have exhausted her personal estate including the books in question. It was held that these facts and the further fact of a contemporaneous deposit in one of the banks of a sum reaching the interest bearing limit indicated that the deposits were not made with the intention of creating trusts. The deposits, therefore, belonged to the estate of Sarah Davis.

### A IN TRUST FOR B.

*Magee v. Knight* (1907), 194 Mass. 546, 80 N. E. Rep. 620.

*A deposit by A in trust for B creates no trust where A retains the pass book and control of the fund until his death.*

A depositor, having seven savings bank accounts, had them transferred to himself in trust for certain persons. The depositor retained control of the pass-books until his death and treated the accounts as his own. On one occasion he exhibited the books to three of the persons he had named as beneficiaries and told them that he should take the interest as long as he lived, but that when he died the books should belong respectively to them. This the court held to indicate, not an intention on his part to make them a present gift of the principal, so as to pass it irrevocably out of his hands, but to indicate rather what he supposed would happen after his title

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to the principal had ceased by his death. He intended to make a transfer which would become effective on his death. This, however, he could not do. It was not his intention to pass title to the accounts during his lifetime. The title, therefore, remained in him at the time of his death. At his death the money belonged to his estate.

### ASSIGNMENT IN TRUST.

McEvoy v. Boston Five Cents Savings Bank, (1909), 201 Mass. 50, 87 N. E. Rep. 465.

*A trust intended to operate solely as a testamentary disposition is invalid.*

The owner of two savings bank accounts assigned them in trust to be devoted to certain designated purposes after her death. In the instrument creating the trust it was provided, among other things: "The said trustee shall pay to me such moneys as I shall demand of him at any time during my life until I have used the amount conveyed to him by this deed." It also provided: "I hereby reserve to myself the right to revoke this deed at any time during my life." It was held that the deed was intended to operate as a testamentary disposition and was invalid because not executed in conformity with the statute of wills. The depositor retained the right to use the fund during her lifetime and the deed merely expressed her wishes in regard to the disposition of her estate after her death. She could revoke the trust at any time and could, at any time, demand from the trustee all the money. It was held that, upon her death, the money belonged to her estate.

### A AND B, SUBJECT TO WITHDRAWAL BY EITHER.

Springfield Institution for Savings v. Copeland, (1894), 160 Mass. 380, 35 N. E. Rep. 1132.

Money was deposited in a savings bank in the names of A and B, husband and wife, "subject to withdrawal by

## BANK DEPOSITS

either." In another bank an account was opened in the two names, "either to draw whole or part." It appeared that all but \$100 of the money belonged to the wife. There was no evidence as to the source of the \$100. The wife died after the husband and the money was claimed by the administrator of the husband and by the wife's administrator.

It was held that the money belonged to the wife's estate. It was said in the opinion that the form of the deposit indicated an intent that the fund should belong to the survivor, if not withdrawn during the lifetime of both. It was also held that the husband's estate was not liable for any money which he had drawn and used for his own benefit.

## MICHIGAN.

### DEPOSIT OF A'S MONEY PAYABLE TO B OR C.

Sav. Bank v. Look, (1893), 95 Mich. 7, 54 N. W. Rep. 629.

A, the wife of B, shortly before her death, had a sum of money in a trunk, and declared that at her death B and C were to have the money, and the survivor of them was to take it; but there was no delivery of the money before A's death. Afterwards B and C deposited the money in a savings bank, payable to either B or C. B died, and C claimed the money as survivor; the executor of B also claimed it; also the administrator of A. The bank refused to pay any of the claimants and brought a bill of interpleader.

Held: The bank took the proper action in bringing a bill of interpleader, otherwise it was subject to three actions by the respective claimants. Notwithstanding by the terms of the deposit, it was payable to C, the bank was right in refusing to pay it to her. If the bank paid to any one of the claimants, other litigation would or might arise and the bank be involved in needless litigation.

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Further held: There was no valid gift *causa mortis* and the money belongs to the estate of A.

### A IN TRUST FOR B.

O'Neil v. Greenwood, (1895), 106 Mich. 572, 64 N. W. Rep. 511.

A, the owner of certain notes and certificates of deposit, enclosed the same in separate envelopes, together with bills of sale thereof to his child and grandchild, and indorsed upon the envelopes the names of the respective beneficiaries. At the time he stated that he should, during his life, collect the interest accruing on the obligations, but that the principal sum was upon his death to be the property of the persons named and that the papers should then be delivered to them. He retained the instruments during his lifetime, collecting the interest thereon in accordance with the intentions so expressed; but he frequently declared that he held the notes and certificates in trust for such persons, and at his death the papers so set apart, or obligations of equal value, were found to be intact.

Held: A trust was created for the parties named, which was enforceable in equity. The creation of a trust does not depend upon the use of a particular form of words, but it may be inferred from the facts and circumstances of the case.

In order to create a trust in the donor, however, there must be an act or series of acts, sufficient to divest him of the equitable ownership and vest such ownership in the donee.

The donor may become a trustee for the donee, though retaining a life use of the trust fund.

Where a gift, otherwise complete, is beneficial to the donee, an acceptance will be implied.

It would seem to be the rule in Michigan that the execution of an instrument which, if delivered, would operate as a transfer of title to property, with intention

## BANK DEPOSITS

to effectuate such purpose, operates as a declaration of trust, although the possession of such instrument be retained by the grantor. But however this may be, it cannot be said that the existence of such an instrument is inconsistent with an intention to create a trust in the grantor, as evidenced by other acts, where it appears that it was not intended to operate as a conveyance of the legal title until after full performance of the trust.

### A OR B.

*Burns v. Burns*, (1903), 132 Mich. 441, 93 N. W. Rep. 1077.

*The addition of a wife's name to a husband's bank account does not establish a gift to her when the husband retains control of the fund.*

A depositor in the Detroit Savings Bank instructed the teller to fix the account so that either he or his wife could draw the money at any time. The teller accordingly put the wife's name in the book opposite the name of the depositor. Later the wife called at the bank and stated that her husband was dangerously ill and that his recovery was unlikely.

The teller advised her to draw the money and open a new account in her name, which she did. Subsequently the husband died and the question of the ownership of the fund arose. At the time when the husband made his will he was asked about the bank account and responded that it belonged to his wife. It was held that the money belonged to the husband's estate and not to the wife. There was no gift to the wife for the reason that he never relinquished dominion and control of the fund.

## MISSOURI.

### A AND B.

*Craig v. Bradley*, (Mo., 1911), 134 S. W. Rep. 1081.

*Whether or not a deposit by a man of his money in the*

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*names of himself and his wife creates an estate by the entirety, entitling the wife to the deposit on the husband's death, depends upon the intention of the depositor. In this case it was held that the depositor intended to create such an estate.*

William E. Bradley opened two bank accounts in the names of "William E. and Julia A. Bradley," Julia being the wife of William. Julia survived William and after her death her administrator claimed the funds on the theory that the deposits constituted an estate by the entirety which, on the death of William, passed to Julia. The administrator, of the husband, who was the defendant in the action, contended that, while formerly there could be estates in entirety in personal property, such estates were in effect abolished by the married women's statutes which, in a property sense, disunite husband and wife. It was held that while the married women's statutes abolished the legal unity between husband and wife, which gave rise to estates by entirety, they left the estate itself intact. The mere deposit by the husband of money in the names of himself and his wife would not of itself conclusively establish the creation of an estate by entirety. Whether or not such an estate was created was held to depend upon the intention of the depositor. It was held that the circumstances surrounding the deposits left no doubt that the husband intended that the survivor was to have all of the deposits. An estate in entirety was, therefore, created and the wife's estate was entitled to the funds.

## NEW HAMPSHIRE.

### A FOR THE BENEFIT OF B.

Perry's Petition, (1884), 16 N. H. 44.

*A deposited money in a savings bank for the benefit of B, to be paid to B when she arrived at the age of 21. Before B arrived at the age of 21, A was taxed as owner of the deposit.*

## BANK DEPOSITS

*Held: A remained owner of the deposit, as it had not been accepted by B and A was subject to taxation as owner.*

On July 1, 1834, Caleb Perry made a special deposit in the Cheshire Provident Institution for Savings in the following terms:

"July 1, 1834. I this day deposit in the Cheshire Provident Institution for Savings, \$400, for the benefit of Caroline Perry, only child of the late Caleb Perry, late of Troy, N. H., the principal and interest to be paid to said Caroline when she arrives at the age of 21 years and not before. And in case of her decease before she arrives at that age, the same is to be paid to me or my heirs on demand.

Caleb Perry."

On September 29, 1834, Caleb Perry made another deposit of \$400 in the same terms.

On May 25, 1842, he called on the trustees at the bank and told them he had mistaken the amount of his property and wished to withdraw the interest which had accumulated on the sums deposited, amounting to \$255.66, and it was then paid to him.

On tendering to the selectmen of the town of Temple an invoice of his property liable to taxation on April 1, 1843, Perry spoke of the above sums but denied his liability to pay tax therefor and omitted their amount from his invoice. The selectmen thereupon assessed him for four times the amount of the deposits by way of doomage. Caroline Perry was then alive and not reached the age of 21. Perry petitioned the court for an abatement of such taxes.

Held: Perry resided in the state and was therefore liable to be taxed for the money deposited in the bank provided he was the owner of it. We are of the opinion that Perry was the owner, notwithstanding the deposit was to the use of Caroline Perry. We think that the deposit in the bank cannot be distinguished from a de-

## DECISIONS

posit in the hands of an individual. It would be clear that if the money had been left in the hands of an individual, it would have remained the property of the depositor, at least until it had been accepted by the person for whose use or benefit the deposit was made. There was no consideration for it. It was a mere gratuity and inchoate gift and the property did not pass from him who meditated the gift until it was accepted by her for whom it was intended.

The court, however, holds, that although Perry was liable to be taxed as owner of the deposit, a case of doomage had not been made out as there had been no willful omission to give a perfect invoice, and therefore three-fourths of the tax was abated.

### A IN TRUST FOR B.

Bartlett, Adm'r. v. Remington, (1878), 59 N. H. 364.

*A deposited money "in trust for B," not intending to part with title so long as she lived, but intending that whatever might be left at her death should go to B.*

*Held: A retained title, and at her death, the money belonged to her estate, and not to B. The transaction was not a present gift to B but an attempt to make a testamentary disposition of property, not in accordance with the statute of wills.*

Mary A. Remington deposited in a savings bank \$500 in her own name "in trust for Sarah." The by-laws of the bank which she signed provided that no money should be paid without a production of the deposit book and that any depositor might designate, at time of making the deposit, the person for whose benefit it was made, and the depositor and his legal representatives should be bound by such condition. It was proved by parol evidence that by "Sarah" the deceased meant Sarah Sturoc. The referee found that the deceased did not intend to part with the title or power of disposing



## BANK DEPOSITS

of the property so long as she lived, but intended that whatever might be left of it should, at her death, go to Sarah Sturoc.

The administrator of Mary A. Remington brought suit to determine who was entitled to the deposit.

Held: Parol evidence was properly received to identify the person called "Sarah." The by-laws signed by the deceased, constituting a contract between her and the bank, to which Sarah Sturoc was neither party nor privy, it is proper to show the actual intention of the deceased. An executory trust without consideration is not enforceable. It is essential that the trust be executed and that the equitable title and beneficial interest be vested in the *cestui que trust*. A deposit in a savings bank in trust for another who is neither party nor privy to the transaction is an executory trust, if the depositor retains the title and the power of disposing of the property.

In cases of this kind the questions are whether the depositor intended to establish a trust and make himself a trustee, what is competent evidence of his intention, and what inference of fact is to be drawn from the evidence. In this case the depositor did not constitute herself a trustee. The nominal trust was a testamentary disposition of property not made according to the statute of wills, and the fund remains a part of the depositor's estate.

## NEW JERSEY.

### A IN TRUST FOR B.

Nicklas v. Parker, (N. J., 1905), 61 Atl. Rep. 267.

*A deposit in trust for a person not living at the time belongs to the estate of the depositor at her death. A mere deposit in trust for another does not establish a gift in favor of the beneficiary where the depositor retains complete control of the fund during her lifetime, and does not notify the beneficiary.*

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Ellen Cunningham deposited a sum of money in her name "in trust for Eliza Clark" and another sum "in trust for Mary Clark." It appeared that both of these persons had been dead for several years at the time of the deposits. It was held, upon the death of the depositor that the money belonged to her estate.

The depositor opened another account "in trust for Honora Finerty," the latter being a friend of the depositor. The beneficiary did not learn of the deposit until the death of the depositor. There was no evidence of any intent on the part of the depositor to create a trust, except the pass-book, which remained in the depositor's possession until the time of her death. It was held that this was not sufficient to establish a trust in favor of Honora Finerty.

In the opinion it was said: "The right of the person named as *cestui que trust* (Honora Finerty) to have the fund on deposit must rest upon one of two theories; *i.e.*, that it was a gift *inter vivos* by the depositor to her, or that it was a valid trust now enforceable by her. In either event the intention must be clearly proven, and such intention must be shown to have been carried into effect by the donor or settlor. The nature and amount of proof required, and the essentials to be proven, are similar with respect to each of the two necessary contentions. The form of the transfer and the time of enjoyment by the beneficiary may be different with respect to a trust, but there must be the same definiteness and clearness of proof of the completed execution of intention in the one case as in the other. It is clear that the depositor in this case did not intend to make a gift *inter vivos* to Honora Finerty of the money deposited. If she had intended to do this she would either have deposited the money in the name of Honora Finerty, so that the latter could have drawn it at will, or, if she preferred to put it in the form of a trust, she would have vested Honora Finerty with power

## BANK DEPOSITS

to draw immediately, or under conditions which she might specify, from the trust funds." The court therefore concluded that there was neither a gift nor a trust in favor of Honora Finerty.

### A IN TRUST FOR B. A, AFTER DEATH PAY B.

Smith v. Speer, (1881), 34 N. J. Eq. 336.

*A deposit in trust for, or for the benefit of, another, wherein the beneficiary is to take no interest until the death of the depositor, is testamentary in its character and the beneficiary gains no title to the deposit.*

A depositor ordered that the following entry be made in her account in the Provident Savings Institution, of Jersey City: "Frank B. Smith, hatter, Danbury, Conn., son of Joseph Smith and Cornelia; to be drawn by Rachel (depositor); after death, by Frank." Frank Smith was the depositor's nephew. In her pass-book in the Howard Savings Institution of Newark, N. J., she caused the following entry to be made: "This account is in trust for Frank B. Smith," and signed it with her name. She kept the pass-books of both accounts in her possession and drew the dividends up to the time when she was duly declared to be of unsound mind. Her husband was appointed her guardian and as such, claimed the right to draw the money. The nephew sued the guardian, claiming that the depositor had declared a trust in his favor of the moneys. It appeared that the depositor had told the nephew that she had had all her money "put in trust" for him, but that both of them understood that he was not to have any of it until after her death. It was held that it was clear that the depositor did not intend to part with her complete and absolute control over the funds and that she had not parted with the legal title thereto. Her design in making the entries evidently was to make a disposition of a merely testamentary character and the nephew, therefore, had no valid claim.

## DECISIONS

### A, IN EVENT OF DEATH, PAY B.

Stevenson v. Earl, (N. J. 1903), 55 Atl. Rep. 1091.

*A gift to take effect upon the donor's death is not valid.*

One of the rules of the Pennsylvania Railroad Employees' Savings Fund, required employees, who deposited in the fund, to state in their application "the name and residence of the person to whom, in the event of death, his deposits and the accrued interest thereon shall be paid." One of the employees, who opened an account, requested "that in the event of my death all deposits standing to my credit in said savings fund, and all interest thereon shall be paid to my wife." The amount on deposit varied from time to time, and at the employee's death his account contained \$1,578. At the time of the initial deposit he gave the pass book to his wife stating to her that if he died the money should go to her and that she could get it by giving ten days' notice to the company. He left a will in which all his property, except a legacy to his executor, was given upon certain trusts set forth in the instrument.

It was held that there was not a valid gift to the wife. There was a clear donative purpose on the part of the husband, but that donative purpose was confined to the amount which should be left on deposit at the time of his death. He intended to retain the absolute control and ownership of the moneys deposited during his life. To legalize such a gift, there must be not only a donative intention, and a delivery, but also a complete stripping of the donor of all dominion or control over the thing given. This is the crucial test and, when it is applied to the present case, the gift cannot be sustained. Said the court: "Such a gift is purely testamentary in its character. If it is not then it is a perfectly easy thing for a person to retain the absolute control and dominion over his moneys and personal securities during his life, and transfer that dominion to another at his death, with

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total disregard of the requirements contained in the statute of wills, by the simple device of depositing such moneys and securities under an agreement with the depository that he shall have the right to use them or deal with them as he pleases during his life, and that at his death so much of them as may remain shall be delivered to such person as is named in the agreement, who shall then become the owner thereof, and then delivering the agreement to the beneficiary with a statement of the same purport, as that made by the deceased to his wife when he gave the pass book to her. To hold that such a method of disposing of property is valid would be to practically repeal the statute of wills in its operation upon personal property, so far as its mandatory provisions are concerned."

### A AND B.

*Skillman v. Wiegand*, (1896), 54 N. J. Eq. 198, 33 Atl. Rep. 929.

*A deposit in two names jointly, coupled with loose declarations indicating a gift, are not sufficient to create a gift.*

A depositor in the Bee Hive Bank in Jersey City, N. J., had his account changed by the addition of his daughter's name. His object and purpose in making this change were not shown by any direct evidence, but the circumstances indicated that it was done, not for the purpose of making a gift to the daughter, or creating a joint estate with the right of survivorship, but merely for convenience in drawing the money. The book remained in the depositor's possession until the day before his death, when the daughter obtained it and drew the money. There was no evidence as to how the book came into her possession. After the depositor's death, when the money was demanded by the executor of his will, the daughter refused to give it up, but did not claim to be entitled to retain it as a gift to her. There was evidence that, a few weeks before he died, the depositor had said "they"

## DECISIONS

had compelled him to make a will but that Lizzie, the daughter, "would down them all." The court found that the evidence showed that the depositor did not intend to make a gift, but added his daughter's name for the purpose of great convenience in drawing the money. There being no intent to give and no delivery to the daughter, it was held that the fund belonged to the testator's estate.

In the opinion it was said: "In view of the well known practice of savings banks to pay money only upon the presentation of the depositor in person of his or her pass book, the motive of drawing money without personal attendance becomes at once prominent and a not uncommon purpose in the placing of moneys in bank to joint account. The effect of the creation of such joint account is, in such cases, simply to make the one party the agent of the other to draw the money; and, in case of savings bank, the proprietor of the fund, by retaining the pass book in his possession, retains complete control of it."

## A AND B.

Dennin v. Hilton, (N. J., 1901), 50 Atl. Rep. 600.

*A deposit by A in the joint names of himself and B, with intent to make a gift to B, coupled with a delivery of the pass book to B, constitutes a valid gift.*

One Caroline Jones entered the family of a retired sea captain as a domestic. She had, or subsequently acquired four savings bank accounts, which stood in her own name. A strong attachment grew up between the captain's family and Caroline Jones and, after living with the family for a number of years she was accepted as an equal. A few months before her death she determined to give her money to the captain. With that view she consulted the president of one of the savings banks as to the most efficient mode of making the gift, and he advised her to have the moneys standing to her credit in

## BANK DEPOSITS

the various banks placed to the joint credit of herself and the captain. Shortly after this she was advised by her physician that she was stricken with a fatal disease. She then deliberately set about having her four savings bank accounts consolidated into two, and the whole put in the joint names of herself and the captain. Two accounts in New Jersey were consolidated in the Provident Institution for Savings in the joint names of the two, with these words added: "This account and all money to be credited to it belongs to us as joint tenants, and will be the absolute property of the survivor of us, either and the survivor to draw." Two accounts in Brooklyn, N. Y., were consolidated in the Brooklyn Savings Institution in their joint names, with this addition: "Money on this account to be paid to either party; in case of death of either one the survivor to draw the balance." Before her death Caroline Jones delivered both of the new pass books to the captain and told him how she wished part of the money used in the erection of a monument and in the making of certain small presents. It was held that there was a gift to the captain and that the balance on deposit belonged to him.

### A AND B.

Taylor v. Coriell, (1904), 66 N. J. Eq. 262, 57 Atl. Rep. 810.

*A deposit in two names jointly will not create a gift where it appears that the depositor's object was convenience in drawing the money.*

Richard B. Coriell deposited money in an account entitled "Richard B. and Mary E. Coriell," in which form it remained at his death. Mary was the daughter of Richard. After his death Mary and her step-mother both claimed the deposit.

It appeared that, before the opening of this account, the depositor had had difficulty in drawing deposits of

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members of his family who had died. After that every account owned by any member of his family stood in two names. The court was satisfied that the only reasonable presumption that could be drawn was that his object was to provide for the convenient management of the fund in event of the death or incapacity of the owner and depositor. In this particular instance the depositor retained the pass book until the time of his death, and, under the rules of the bank, money could not be drawn out without the production of the pass book. The depositor also drew sums out of the deposit whenever he wished and in general retained control and dominion of the fund. It was held that the daughter was entitled to no interest in the fund for the reason that the father never intended that she should have any interest. The elements of a gift *inter vivos* were not present.

### A OR B, PAYABLE TO EITHER OR SURVIVOR.

Hoboken Bank for Savings v. Schwoon, (1901), 62 N. J. Eq. 503, 50 Atl. Rep. 490.

*Where A deposits money to the credit of "A or B, payable to either or survivor," and gives the pass book to a friend with instructions to deliver it to B upon A's death, there is a complete declaration of trust in favor of B.*

Helena Roche had a deposit in her name in the Hoboken Bank for Savings. She went to the bank with Henry Schwoon, her grandson and had the pass book changed to read "Helena Roche or Hy. Schwoon, in account with Hoboken Bank for Savings, payable to either or survivor." At the same time she signed a writing, authorizing the bank to make such change, and stating that she and Schwoon would be copartners in the ownership of the money, and that either or the survivor might draw. Subsequently, when the pass book was filled with figures, a new one was issued, inscribed as the old one had been. Mrs. Roche delivered the book to, a friend with instruc-



## BANK DEPOSITS

tions to give it to Schwoon upon her death. It was held that the signing of the statement at the bank, the opening of the joint account and the delivery of the book to a third person for the donee made a complete declaration of trust. "The bank would have been perfectly justified in paying the amount due on the book to the donee upon presentation of the book."

"The objection to this mode of making a gift is that it is testamentary in its character, and, in effect, a will, and therefore void under our statute. In support of this conclusion is pointed out the circumstance that the power of disposition by the donor continues during his or her lifetime. But this circumstance has not deterred the courts from giving effect to such arrangements. This has been done on two grounds: First, that a joint estate or interest is created, with an express right of survivorship, which operates naturally and legally upon whatever of the fund remains unused at the death of the donor; and, second, on the ground of a completed trust."

### A OR B.

Dunn v. Houghton, (N. J., 1902), 51 Atl. Rep. 71.

*The changing of an account, so as to make it payable to the depositor or another, constitutes a valid gift inter vivos.*

A depositor in the Emigrant Industrial Savings Bank, in New York, one Mary Kane, in 1894, took her fourteen year old niece to the bank with her and caused the account to be transferred to the credit of "Mary Kane, or niece Katie Pender." Both of them placed their signatures upon the book kept by the bank for that purpose. The account was not added to nor drawn from during the lifetime of Mrs. Kane. The rule of the bank in regard to deposits in two names was to pay either party upon presentation of the pass-book. It was clearly shown that the depositor's intention was that she should control the deposit during her lifetime and that her niece should

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have absolutely for her own use what might be left of it after the depositor's death. The depositor retained the pass book until she was dying. After the depositor's death the niece brought suit against her executors. For the purpose of establishing a gift *causa mortis* of the deposit the niece showed that, before her death, the depositor gave her a key to a trunk which contained the pass book, directed her to get it and draw the money. The trunk was in another room, not within the sight of the depositor. The niece obtained the book and almost immediately delivered it to an attorney acting for the estate, for safe keeping. It was not shown that the depositor was notified that the book had been obtained by the niece. Evidence was introduced to the effect that the book was in fact taken from the person of the depositor when she was unconscious.

It was held that there was not a valid gift *causa mortis*. There was not a sufficient delivery of the deposit, or of the book which represented the deposit. The delivery of the key to the trunk, which contained the deposit, would not, under the circumstances, it was said by the court, be taken as the equivalent of the delivery of the pass book. If Mrs. Kane wished to give her niece the pass book, there was no reason why she should not have sent for it and deliver it to the niece, after seeing and identifying it. The key was not the symbol of the pass book, although it might be regarded as the symbol of the entire contents of the trunk. That is Mrs. Kane might have made a gift *causa mortis* of the trunk and all its contents by the delivery of the key to the trunk, but she could not in that manner make a gift of some particular thing contained in the trunk.

But there was a valid gift *inter vivos*. The deposit in the two names alternately, although Mrs. Kane retained possession of the pass book, left nothing to be done to complete the gift, Mrs. Kane retained the right to draw

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from the account during her life time. The book was kept by her in order to enable her to exercise that right and its retention, therefore, did not leave the gift incomplete as in the case of an attempted gift of a deposit standing in the depositor's name alone.

The court said: "Perhaps the same result could be reached by regarding what took place between the bank and Mrs. Kane and her niece as amounting to a settlement in the nature of a trust. Whichever of these two theories may be adopted, the result is the same. The retention of control over the property during the life of the donor, and a reservation of power to consume the property and make the donative transfer of no value, do not affect the fact that a transfer of property by way of donation has in fact been made."

### A OR B.

*Schippers v. Kempkes*, (1907), N. J.; 67 Atl. Rep. 74. Aff'd. 72 N. J. Eq. 948; 73 Atl. Rep. 1118.

*The mere deposit by A of his money in an account entitled "A or B," does not constitute a valid gift to B.*

At the request of a depositor, Elizabeth Kempkes, her savings bank account was changed by adding the name of her son. The account then read "R. Herman or Elizabeth Kempkes." It was held that this did not constitute a valid present gift in favor of the son. The depositor "in no sense gave over the possession of the pass book to Herman, or ceased either her actual dominion over it or right to reduce the fund represented by it to her own possession at any time." The evidence seemed to establish that the change was made for convenience in drawing in the account.

Nor did the transaction amount to a gift to take effect at the death of the donor. "Such attempted gifts, *donatio causa mortis*, are not valid, but are clearly void under our decisions; not, of course, because of the lack

## DECISIONS

of a donative purpose, but because the intent or direction is testamentary in character, and not made in the manner prescribed by the statute of wills."

### A OR B.

*Carlin v. Carlin*, (N. J., 1906), 64 Atl. Rep. 1018.

*A deposit in the names of a father and daughter, where the fund represents the earnings of the daughter, and the bank book is kept in a place accessible to the daughter, belongs to the daughter upon the father's death.*

The bank account in question was entitled "Peter Callinan or Maggie Callinan," "Callinan," being intended for "Carlin." The parties were father and daughter. It appeared that for a long time the daughter had been in the habit of turning over her wages to her father. The father made such use of it as he chose, spending some of it for his daily needs, and depositing the balance to the credit of an account in a trust company, standing in his name, together with money from other sources. Later the father closed the account standing in his name and caused the balance to be transferred to an account in the names of himself and his daughter, as stated above. Upon the death of the father the daughter claimed the deposit.

The evidence did not disclose clearly any reason for the change in the account. One witness testified that she had heard the father state to the daughter, speaking of the deposit, that "it was hers, and if any one got any more of it, it was her own fault." There was evidence of other declarations by the father tending to show that he regarded the money as belonging to her. It also appeared that in enumerating his estate to the person who drew his will he did not refer to the bank account.

It was urged that the daughter did not have sufficient possession of the pass book to establish her ownership of the fund. The book, it seems, was kept in a common

## BANK DEPOSITS

repository and was accessible to the daughter. It was held that her possession was sufficient. The fund was declared to belong to the daughter. "I am satisfied," said the Court, "that the testator in changing the account intended to pay to his daughter the fund in bank in settlement of what he had saved of her earnings for her."

### A AND WIFE, OR EITHER.

Schick v. Grote, (1886), 42 N. J. Eq. 352, 7 Atl. Rep. 852.

A husband deposited his money in a savings bank in the following form:

"Bank for Savings, in account with A, and wife E, or either."

The husband had already deposited there, on the same occasion, as much as the bank would receive in his name. He drew the interest on the deposit himself. There was no proof of a delivery, and the only evidence of a gift was a declaration to his wife, when she was scolding him about drawing out and spending his money, that he would have nothing more to do with the deposit.

In a controversy, after the death of the husband, as to whether the money belonged to the wife, or the husband's estate,

Held: The form of the account to which the deposit was made, is not evidence of a gift to the wife, nor is it in connection with the other evidence in the case sufficient to establish a gift. To constitute a perfect gift, the donor must part with the possession of, and the dominion over, the property. In this case, the husband retained control over the property to the time of his death.

## NEW YORK.

### A IN TRUST FOR B.

Martin v. Funk, (1878), 75 N. Y., 134.

*In this case, the form of the deposit alone unexplained by*

## DECISIONS

*other evidence, is held sufficient to create a trust in favor of B, who, after A's death, is held entitled to the deposit as against the administrator of A.*

Susan Boone, in 1866, deposited a sum of money in a savings bank, declaring at the time she wanted the account to be in trust for Lillie Willard, a distant relative. The account was opened as follows:

"The Citizens' Savings Bank in account with Susan Boone, in trust for Lillie Willard."

Mrs. Boone retained possession of the pass-book until her death in 1875, and Lillie Willard was ignorant of the deposit until after that event. The money remained in bank with accumulated interest until the death of Mrs. Boone, except that she drew out one year's interest.

Lillie Willard, having sued the bank and Mrs. Boone's administrator, was held entitled to the deposit.

The court held that the form of the deposit alone, where its import was uncontradicted by other evidence, was a sufficient declaration of trust, and transferred the title from the intestate individually to herself as trustee. Retention of the pass-book was not inconsistent with this effect, notice to the *cestui que trust* was not necessary, nor did the ignorance of the latter of the trust until after the death of the depositor, affect its completeness.

### A IN TRUST FOR B.

Willis v. Smyth, (1883), 91 N. Y. 297.

*The decision in this case is similar to the last, certain circumstances such as the depositor retaining pass-book, withdrawing interest offering to loan the fund and depositing in the same account after the beneficiary's name had been changed by marriage, being insufficient to negative the trust.*

On June 28, 1850, Clarinda P. Urner deposited \$288 in the Seamen's Savings Bank in an account headed:

"Clarinda P. Urner, in trust for Sarah J. Urner."

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Sarah was her daughter, then a minor and unmarried. On December 11, 1874, Clarinda having \$4,500, the proceeds of the sale of her house, at first intended depositing this whole sum in the Bowery Savings Bank, but concluding not to risk the whole in that bank, deposited \$2,000 in the above account, and the balance in the Bowery. Before this deposit, Sarah had married one Alexander Smyth. Clarinda P. Urner at the time of the deposit of \$2,000 also deposited \$25 in the same bank in trust for her granddaughter. Prior to the time of the \$2,000 deposit, she had drawn out nearly all of the first deposit, with interest, and prior to her death she drew out the balance of the first deposit, with the interest on the \$2,000.

This action was brought by the administratrix of Clarinda P. Urner, against the bank, and Sarah J. Smyth daughter of Clarinda, to determine the title to the deposit. The conclusion reached is that there is no material difference in the circumstances of the present case, and those in *Martin v. Funk*, and it is held a trust was created which entitled the daughter to the deposit. "It is clear," says the court, "there was an evident intention on the part of the deceased to create a trust for the benefit of her daughter, and we are unable to see any ground upon which that intention can be subverted." It is also held that the fact that prior to the second deposit, the daughter was married and bore a different name, at that time, and that the name was not changed in the account, did not affect the question, as the deposit was clearly made for her benefit. Nor did the fact that Clarinda retained the pass-book, and drew out the interest, change or affect the character she had given to the deposit as a trust fund; nor did the fact that she had offered to loan the money after the deposit was made; or that she, in the first place, intended to deposit the whole purchase money in another bank.

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### A IN TRUST FOR B.

Mabie v. Bailey (1884), 95 N. Y. 206.

*In this case the form of the deposit, "A in trust for B" presumptively creating a trust in B's favor, is fortified by evidence of statements of A showing his intention that the deposit was for B, and where A afterwards drew out the deposit and subsequently died, B is held entitled to recover the amount from A's estate, with interest from the time of its withdrawal by A.*

B. Bailey, in 1864, opened an account:

"B. Bailey in trust for Ida Mabie."

Afterwards he showed Ida's mother the pass-book and informed her that the deposit was large enough to amount to something for Ida when she grew up. In 1867 Bailey drew out the deposit. In 1879 he died.

Ida Mabie, claiming ownership of the deposit, brought suit against Bailey's executor to recover the amount, with interest from the time it was withdrawn by Bailey, and recovered judgment.

In this case, the presumption of creation of a trust imputed from the mere fact of deposit in this form, was confirmed by evidence of Bailey's independent statements, showing that he intended, when he deposited the money, to create a beneficial trust.

The court further held that a trust once established, is irrevocable, in the absence of the reservation of a power of revocation.

### A IN TRUST FOR B.

Cunningham v. Davenport, (1895), 147 N. Y. 43, 41 N. E. Rep. 412.

*In this case the deposit "A in trust for B" which, unexplained, would import the creation of a trust by A for B, is held not to constitute a trust in B's favor, where, after B's death, A testifies that he never intended to create a trust, nor to part with title to the deposit. In other words, the pre-*



## BANK DEPOSITS

*sumption of a trust arising from the form of the deposit is negatived by evidence of facts to the contrary.*

In 1881, John Cunningham, who had, down to that time, carried an account in the bank in his own name, transferred the money to a new account, as follows:

“John Cunningham, in trust for Patrick Cunningham, his brother.”

Patrick Cunningham died on April 14, 1890, and three days later John re-transferred the account to his own name. The controversy was between Patrick's administrator and John, involving the question whether John had created a trust for Patrick which he could not revoke. John's uncontradicted testimony was to the effect that he always retained the pass-book, never informed Patrick of the deposit, and never intended to give the money, or create a trust for Patrick. On this testimony the court held no trust had been created for Patrick, and John was entitled to the money.

It summed up the doctrine of previous cases thus: The act of a depositor in opening an account in a savings bank in trust for a third party, the depositor retaining possession of the bank book and failing to notify the beneficiary, creates a trust if the depositor dies before the beneficiary, leaving the trust account open and unexplained. If the intent can be strengthened by acts and declarations of the depositor in his lifetime amounting to publication of his intent, a more satisfactory case is made out, but it is not absolutely essential, in the absence of explanation, where he dies leaving the trust account existing.

But it distinguishes the present case because the *prima facie* import of a trust, which arises from such a form of deposit unexplained, is in this case negatived and contradicted by positive evidence showing no trust was intended to be created.

## DECISIONS

### A IN TRUST FOR B.

Farleigh v. Cadman, (1899), 159 N. Y. 169, 53 N. E. Rep. 808.

*In this case the trust presumptively created by a deposit "A in trust for B" is strengthened by facts clearly showing the intention to create a trust. A afterwards had no power, when B incurred his disfavor, to divert the trust fund to another beneficiary by closing the trust account and opening another, and after A's death B is adjudged entitled to recover the trust fund from the second beneficiary who has received it from the bank.*

In April, 1878, Mr. and Mrs. W. J. Cadman agreed to set apart a sum of money, belonging to Mrs. Cadman, for the benefit of one Cora I. Cadman, who had been received into the family as their own child when less than a month old, and was at the time mentioned twelve years of age. Mr. and Mrs. Cadman and Cora all went to the bank and, after consultation with the officers of the institution, W. J. Cadman opened the account thus:

"W. J. Cadman in trust for Cora I. Cadman."

The amount thus deposited was \$778. Afterwards Cadman deposited other sums and drew out others aggregating \$200. On January 7, 1889, about the time of Cora's marriage, which he did not approve, Cadman drew out the whole sum standing to the credit of the trust account, \$2,774.16, closed the account, and opened a new account in his own name in trust for his son, Alfred J. Cadman. He continued to make deposits in this new account in small sums, and to draw out small sums, to the time of his death, September 19, 1892.

This action is by Cora against Alfred, and the judgment is that she is entitled to the whole sum to the credit of the trust account in which she was named as beneficiary, on the day that the account was closed by the act of the trustee.

The court said that a gift, whether in the form of a

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trust, or otherwise, always involves the intention of the donor. Here the facts clearly show the intention to create a trust, and all the facts necessary to establish a trust are present in this case. A valid and irrevocable trust was created for Cora's benefit when the account was opened. The addition to the fund made by the trustee was impressed with the same character as the original deposit. The subsequent deposits to the credit of this account cannot be detached or separated from the original deposit, in the absence of a finding that they were intended for some other purpose, or that they were not made for the benefit of the beneficiary. Such deposits were, *prima facie*, at least, made for the same purpose as the first one, and hence, in every case, were additions to the original gift. The fact that the trustee controlled the deposits was consistent with the existence of the trust; and the trustee could not destroy a trust once established by attempting to divert the fund from the beneficiary to other purposes.

### A IN TRUST FOR B.

*Haux v. Dry Dock Sav. Inst.* (1897), 2 App. Div. 165; affirmed without opinion, 154 N. Y. 736.

*In this case, it is found from the evidence that A, in depositing money "A in trust for B" had no intention, in so doing, to create a trust in B's favor. The rule is stated to be: Whether or not a trust is created depends upon the donor's intention at the time of deposit; that intention is a question of fact to be determined in each particular case from the acts and declarations of the parties and the surrounding circumstances.*

On January 3, 1870, William Haux deposited \$10 with the Dry Dock Savings Institution, opening an account:

"William Haux, in trust for Rosa, Charles and Henry Haux."

William was the father of the beneficiaries named.

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Subsequently he made other deposits, and when he died, October 1, 1894, the account amounted to \$3,000. All the alleged beneficiaries died during the lifetime of the father, and before the death of any, after the death of each, and after the death of all, deposits were made in this account. The deposits in the account changed in nature and extent during the year 1886. Until that time, the deposits were made up of the savings of the children of William, including Mina and Katherine Haux, not named as beneficiaries. After and during 1886, the deposits were of greater amount, which amounts were drawn from and constituted the entire profits of the business of William, the father. William had an account in his own name in the German Savings Bank, in which he was first accustomed to deposit the profits of his business; when, in August, 1886, that account reached \$3,000, he began and continued to deposit such profits in the Dry Dock account here in dispute. From 1870 until his death, William always possessed and controlled the pass-book, and on one occasion he withdrew \$197.36, thereby reducing the amount to the \$3,000 limit. On the same day that the Dry Dock bank account now in dispute was opened, William opened another account in the same institution, "William Haux in trust for William Haux," and the pass-book of this account was delivered to William Haux, Jr., his son, who always possessed and controlled it.

William Haux, the father, was a German, never associating with Americans, and reading and writing English very poorly. His family worked for him, receiving no stated salary, and everything in connection with his business was under his immediate supervision and control. When Henry Haux, one of the alleged beneficiaries, died, the father administered upon his estate, amounting to \$250. When the father made arrangements to have his will drawn, he stated to the draftsman that he had money deposited in the German Savings Bank and in the Dry

## BANK DEPOSITS

Dock Savings Institution. He had no account in the Dry Dock Institution, except the one here in dispute, and the one made in trust for his son William, Jr.

In an action brought by the executor of William, the father, against the Dry Dock Savings Institution, the administrator of Rosa, and others, to obtain an adjudication whether the account in dispute was a trust fund, and to have determined the rights and interests of all parties in such fund, and to have the bank directed to deliver the fund in accordance with the decision, it was adjudged that the money belonged to the estate of William, the father, it being found, from the evidence, that there was no intention upon the part of the depositor to create a trust.

The appellate division, sustaining the finding, said: "The rule now established in this state is that whether or not a trust was created depends upon the intention of the donor at the time of the opening of the account and of the deposits made in the bank, and that question is a question of fact to be determined in each particular case from the acts and declarations of the parties and the circumstances surrounding the transaction at the time of the performance of the several acts."

### A IN TRUST FOR B.

Decker v. Union Dime Sav. Inst., (1897), 15 N. Y. App. Div. 553.

*In this case the creation of a trust inferred from the form of the deposit "A in trust for B," is upheld by testimony which, though conflicting, is declared to show the intention of A to create a trust in favor of B; and where A changed his mind and transferred the deposit to another beneficiary, B, after his death is adjudged entitled to payment by the bank as against the second beneficiary.*

On July 31, 1886, W. F. Du Bois, a widower, made a

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deposit of \$4,086.50 in the Union Dime Savings Bank, opening an account as follows:

" William A. Du Bois, trustee for Ellenora H. Decker."

Mrs. Decker was Du Bois' sister. In December, 1886, Du Bois remarried, and on August 1, 1887, he drew out \$1,000 from the above account and opened and deposited same in another account in the same institution, as follows:

" William F. Du Bois, in trust for Lavinia A. Du Bois (his wife)."

Later he transferred the remainder of the deposit then standing to the credit of the first, to the last named account. Before this, Du Bois drew from both accounts from time to time small sums of money, and they were in like manner credited with interest.

Du Bois died June 12, 1894, leaving \$4,605.72 in the last named account.

Mrs. Decker brought an action against the bank and Mrs. Du Bois, claiming the deposit. The evidence of one witness was that after the first deposit, Du Bois said he had given Mrs. Decker some \$4,000 and odd; that Mrs. Decker knew it and had the bank books. To the contrary, another witness testified that Du Bois said in November, 1886, he had some money in his sister's name; that he changed his mind on account of a falling out with his brother-in-law, and was going to withdraw the money so that his sister would not get a cent that he owned for his brother-in-law to spend; that the reason he put the money in his sister's name was that when the account ran over \$3,000 he was in the habit of withdrawing the money and placing it in another account, so that it would draw more interest.

The trial court found from the whole evidence that the intention existed in the mind of the depositor when he opened the account in trust for Mrs. Decker, to thereby divest himself of the title to the fund and vest the same in

## BANK DEPOSITS

Mrs. Decker; and judgment was given for plaintiff, which the appellate court affirmed.

The court held that the form of deposit, taken by itself, constituted an unequivocal declaration of trust; but it was not conclusive, simply evidence of an intent to create a trust, which might or might not be conclusive. The intention of the depositor becomes the question to be determined in each case, and its solution is governed by a consideration of all the facts and circumstances which surround the transaction; the case becoming essentially a question of fact.

It is quite consistent with all that appears that the original intention of Du Bois was to create a trust in favor of his sister, and that he made the deposit with that intention; that subsequent thereto, either by reason of a quarrel with her husband, or influenced by his remarriage, he changed his mind and attempted to make a disposition of the money in accordance therewith. This, he could not do.

Upon the whole, the case resolved itself into a question of fact, and upon conflicting testimony and inference, the trial court found that a trust was created in favor of Mrs. Decker, and the appellate court is required by the law to uphold this result.

### A IN TRUST FOR B.

Bishop v. Seamen's Bank for Savings, (1898), 33 App. Div. 181, 53 N. Y. Supp. 488.

*In this case the presumption from a deposit "A in trust for B" is not rebutted by any testimony, and where first B, then A, died, payment of the deposit thereafter by the bank to the administrator of B was rightful, the trust being irrevocable and not lapsing because of the death of B before A.*

On May 14, 1881, Ellen C. Maxwell opened an account with defendant bank:

"Ellen C. Maxwell in trust for George T. Maxwell."

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George was the husband of Ellen. From time to time thereafter she made various deposits in the account, allowed the interest to accumulate, and made drafts therefrom. From January, 1887, to the time of her death, she withdrew all interest moneys which were allowed on the account. George died on January 9, 1893. After his death Ellen drew from the account \$57 in February. Ellen died April 23, 1893. The pass-book was found among her effects. Administrators were appointed upon both the estate of Ellen and of George. The administrators of George, on June 14, 1895, presented the pass-book to the bank, and received the money standing to the credit of the account.

This action was brought against the bank by the administrator of Ellen, to recover the amount of the deposit, he claiming that the payment to the administrators of George was unwarranted, and that the administrator of Ellen was the only one entitled to receive the same. The payment to the administrators of George was upheld.

The court said that the presumption from the deposit, which is in no way rebutted by any testimony, is that a trust was created for the benefit of George. Had he survived his wife, no question could possibly have arisen as to his right to claim the money, even as against his wife's administrators. It is insisted, however, that the fact that he died before his wife in some way caused a lapsing of the trust, and that the absence of any evidence that the beneficiary ever claimed any interest in the deposit during life, and the further fact that the pass-book was found among the assets of the wife after her death, gave to the representative of the latter the right, at least as against the bank, to the payment of the money.

We must not fail to note the distinction existing between a contest waged between the administrators of the trustee and the beneficiary, where the money is still on deposit, and one between either of such persons and



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the bank after the latter has made a payment upon the presentation of the pass-book. The former question is not here involved, and need not be considered.

In this action, brought directly against the bank after the payment to the representatives of the beneficiary, before any demand by the representatives of the trustee, we think that in such payment the bank is absolved from further liability to account to the plaintiff.

In our view, the trust did not lapse by the death of the husband before his wife, for the reason that, if the presumption holds good, as it does in the absence of evidence rebutting it, that a trust was created, the authorities are uniform in holding that when once created it is irrevocable. There is no force, therefore, in the argument, based upon the lapsing of the trust, of the reverting of the fund to the donor or creator of the trust.

Our conclusion is that, the plaintiff never having made any demand upon the bank, and the latter having paid over the money on presentation of the pass-book to the representatives of the deceased beneficiary, it is protected in such payment, and the dismissal of the complaint, for that reason, was right.

### A IN TRUST FOR B.

Devlin v. Hinman, (1898), 34 N. Y. App. Div. 107.

*The presumption of a trust by a deposit "A in trust for B" is rebutted by evidence showing that A never intended to divest himself of title; and where B, claiming a trust in her favor, forbids the bank to honor A's checks against the fund, the court, in a suit by A against B and the bank, declares A entitled to the deposit.*

John Devlin deposited a large sum of money in a trust company in the name of

"John Devlin, in trust for Mary Hinman and George W. Devlin."

John was the father of Mary and George. The father

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at the time took powers of attorney from the children authorizing him to control the fund. He treated the account at all times as his own, retaining the pass-book in his own possession and alone drawing checks upon the account, some of which were drawn to the order of the daughter without objection on her part, the father using the account without reference to or consultation with either of his children. Afterwards, the daughter objected, revoked the power of attorney, and instructed the trust company not to pay her father's checks against the account.

In an action by John Devlin against the trust company and his daughter Mary to recover the balance of the account, the company paid the money into court, which upheld the father's title.

The court held there is ample evidence for the conclusion that both parties understood that the plaintiff was the owner of the money, and that he never intended to and never did divest himself of the title to the fund, and never made any irrevocable trust thereof. The sole question is whether the legal title to the fund passed from the plaintiff to Mrs. Hinman, and whether plaintiff divested himself of such title. The evidence forces the belief that the plaintiff did not intend to divest himself of the title and that Mrs. Hinman did not understand such to be his intention.

### A in TRUST FOR B.

Jennings v. Hennessy, (1899), 26 Misc., (N. Y.), 265.

*In this case a depositor opened an account "A in trust for B," afterwards the account was restored to the name of A; it was afterwards changed to "A in trust for C;" and still later to "A in trust for D," and the bank book was delivered to D. In a contest between C and D, the latter is declared entitled to the fund, the trial judge stating that the voluntary trust created by A in favor of B and of C was revocable by the depositor at will.*

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On December 28, 1876, one Hannah Krauth opened an account in the Bowery Savings Bank in her own name; on December 10, 1879, she changed the account to "Hannah Krauth in trust for Ann Eliza and E. M. Valentine;" on February 11, 1881, she restored the account to her own name, and on March 11, 1885, she changed the account to "Hannah Krauth in trust for William G. Hennessy." On July 30, 1890, she surrendered the book containing this account to the bank and received a new book, which was made out at her request to "Hannah Krauth in trust for Henry W. Jennings." She delivered the bank book containing the new account to Mr. Jennings as the person entitled to the fund. Mrs. Krauth boarded with the Jennings family at the time, and there were reasons for making this provision in their favor particularly as she had deposited a like sum in another savings bank in favor of Hennessy, who subsequently received the money. On November 10, 1894, Mrs. Krauth was judicially declared an incompetent person, the finding being that the incompetency dated back to 1892. She died September 11, 1897, and Hennessy thereafter qualified as her executor. At the time of the transfer to Jennings, she was about 82 years of age.

The question before the court was whether the money on deposit belonged to Jennings, or to Hennessy individually, and the New York Supreme Court, at trial term, awards the money to Jennings, its reasoning being as follows:

The trust in favor of Hennessy, like the one previously made in favor of Valentine, was voluntarily created by Mrs. Krauth of her own money, and was revocable by her at will. (Citing *Cunningham v. Davenport*). It was effectually revoked when she surrendered the bank book and opened a new account designating a new beneficiary. In this instance, she did more than change the beneficiary, she delivered the bank book to him. These acts con-

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stituted a valid trust in favor of Jennings and, unexplained, operated to transfer to him the beneficial interest in the money deposited. Her subsequent incompetency did not affect the validity of her act.

### A IN TRUST FOR B.

Board of Domestic Missions v. Mechanics' Savings Bank, (1899), 40 N. Y. App. Div. 120.

*A depositor changing her account from an individual to a trust form, "A in trust for B," held to have created a trust in favor of B, which was not affected because the instruction to change the account was verbal, instead of written, as required by the rules of the bank, the instruction having been complied with.*

Eliza Ann Crowther, depositor in a savings bank, fearing she would not survive a surgical operation she was about to undergo, instructed the officer of the bank, who had called at her home, to make the deposit books payable in trust for a certain religious corporation. The officer made the following entry in the deposit books:

"Eliza Ann Crowther in trust for Board of Domestic Missions of the Reformed Church in America."

And transferred the accounts on the books of the bank in the same manner.

A rule of the bank required a written order for the transfer of an account, but the bank officer did not state this requirement to the depositor, but merely agreed to comply with her directions, and that he would have an order prepared for her to sign requesting the transfer of the accounts. This was never done, but the transfer was made without it.

The deposit books were returned to the depositor, who retained them in her possession until her death two weeks later.

In an action by the Board of Domestic Missions against the bank, and the executor of the depositor, the Board

## BANK DEPOSITS

was adjudged entitled to the deposit, and the judgment is affirmed by the appellate division.

The court holds that an effective trust was declared by the deceased for the benefit of the Board of Missions, and the estate cannot destroy the trust because the bank acted on a verbal instead of a written order.

The rule of the bank requiring a written order was merely for its protection and justification in changing accounts, and in this case was waived. Nothing was lacking to the creation of a valid trust.

### A FOR B.

Lee v. Kennedy (1898), 25 Misc. 141, 54 N. Y. Supp. 155.

*The presumptive trust created by a deposit "A for B" is negatived by facts showing that when the money was put in the bank the depositor, A, stated that B was not to get it until after A's death, nor unless B continued to live with A.*

On June 27, 1890, Ann Kennedy opened an account in the Emigrant Industrial Savings Bank, under the title:

"Ann Kennedy, for niece, Ann Lee."

\$300 was deposited, and other deposits were subsequently made. On July 1, 1893, Ann Kennedy drew out the money, which then amounted to \$1,400. She always retained the bank book. Ann Lee died July 15, 1895, and this action was brought by her administratrix against Ann Kennedy to recover the money so withdrawn.

Plaintiff proved the account with the bank in the form above stated, its amount, and the withdrawal of the balance by defendant.

Proofs were then offered on the part of Ann Kennedy for the purpose of negating any inference which might legitimately be drawn from the form of the account that she intended either to give the money to Ann Lee, or to declare an unqualified trust in her favor with respect to the deposit. Her testimony as to what took place at

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the time of deposit was that she told the bank officer she wanted to put the money in trust for the girl; that she was not to get this "until after my death, and unless she remains with me, she wont' get it."

The court holds there was no immediate, irrevocable trust created which gave Ann Lee a present, beneficial interest in the fund in question. She was to have the money provided she continued to live with Ann Kennedy and in case she survived the latter. Neither condition was satisfied. Assuming there was a trust, it was of a qualified nature, and was defeated upon a failure of the conditions upon which it was limited.

### B, SUBJECT TO CONTROL OF A.

Millard v. Clark, (1894), 80 Hun, 141, 29 N. Y. Supp. 1012.

*Bank accounts were opened by a father, A, with money belonging absolutely to his daughter, B, of which, however, he retained control, in the following form: "B, subject to control of A." The father subsequently deposited other money of his own in the accounts and withdrew some money from the accounts, which he invested in securities for his daughter, retaining like control. The father died. The money in bank is held to belong absolutely to the daughter, the subsequent deposits by him in the account, constituting gifts to her, perfected by delivery into her bank account; and the securities were held by him as trustee for her.*

*The court says that so far as the daughter's title to the money depends upon creation of a trust, as distinguished from a completed gift, the form of the account, "B, subject to control of A," is equivalent to "A in trust for B," that the form of deposit does not of itself determine the question of intention, but surrounding circumstances may be resorted to; that the reservation of a power of control is not fatal to the creation of a trust; and that the circumstances clearly establish title in the daughter.*

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In February, 1858, O. R. Young, father, opened an account in the Central Savings Bank in the name of his daughter, Amelia, in which he deposited money which she had theretofore saved by placing money in a child's savings bank at home, and from time to time deposited other money in this account. He told her he had started a bank account for her, occasionally showed the bank book to her, but never delivered it to her to keep herself. Later on her birthday he handed her \$100 as a present, which she retained part of a day and then handed it back to the father, who deposited it in the Troy Savings Bank, opening an account in the daughter's name "subject to the control of" the father. This account was subsequently increased by various deposits made by the father, and by interest earned. Later, in 1878, when the Central Savings Bank ceased business, the deposit was transferred to the Central National Bank of Troy, and the form of the account, formerly in the daughter's name, was changed to her name "subject to the control of" the father. The bank books were from time to time shown the daughter who was told by her father of the money she had in the bank, which he was constantly increasing for her until his death.

The subject of the accounts was matter of frequent conversation between father and daughter, the latter at times urging the father to turn over the accounts to her, he refusing, stating that after his death she might need the money more than while he lived, and he would keep them, so that when he died, she would not be ashamed of the amount in bank.

In 1889 the father, without Amelia's knowledge, withdrew \$1,800 from the two accounts, investing same in two bonds and mortgages, assigned to him in his own name, to each of which he wrote and attached a memorandum, as follows:

"This bond is for my daughter, Amelia M. Millard.

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It is the money she had in the savings bank to her credit, which was put in the bank when she was small. I now put it in this form so that she can realize more interest. At my death this is to go to her.

“ O. R. YOUNG.”

“ Troy, May 2, 1889.

The interest derived from these was deposited in the account in the Central National Bank “ subject to the control ” of the father.

Young died in 1892, leaving a will disposing of the estate creating a trust of a portion thereof for the benefit of Amelia. Nowhere in the will was any specific mention made of the bonds and mortgages and the bank accounts referred to. Young had one other daughter, and had remarried in 1886, and his widow survived him.

This action is by the daughter Amelia against the father's executors to compel the delivery of the bank books and the bonds and mortgages, and the circumstances are held to warrant the conclusion that she has title to both.

The court holds the money first placed in the Central Savings Bank in Amelia's own name was her own money; that stamped the character of the account from the beginning as an account composed of her money; subsequent contributions to the account by her father, without previously going through her hands, constituted a gift to her; it became part of her money; being so intended by the father, the intent being effectuated by placing it with that which was theretofore hers. The accumulated interest was also hers. The other account in the Troy Savings Bank, opened with the \$100, was with money which had been delivered to her as an absolute and perfected gift, and it was hers, and not her father's money, that was deposited. The interest accumulations, and accretions by subsequent deposits of the father of his money in the same account, were impressed with the



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character of the account when deposited and belonged absolutely to the daughter.

Regarded as a trust, the money belonged to the daughter subject to the control of the father. The reservation of a power of control is not fatal to the creation of a trust; nor is the retention of the bank book by the creator. The father was acting as custodian or trustee of the daughter's money, such legal rights as he retained being held as trustee. There is no difference in principle between money deposited to account of "A in trust for B" and "B, subject to control of A"; in each the beneficial interest is in B; in each, the management and control is in A. The form of the deposit does not of itself determine the question, but surrounding circumstances may be resorted to to determine what was intended.

The conclusion is, therefore, reached that the money remaining in the banks is the daughter's own money; the gift thereof, so far as originally derived from the father, was completed by actual delivery, some of it into her hands, the rest into her bank account; and as to the money withdrawn and invested in bonds and mortgages, the investment was for her benefit, and the bonds were held by her father as trustee.

### DEPOSIT BY A IN NAME OF B.

Beaver v. Beaver, (1889), 117 N. Y. 421; 137 N. Y. 59.

*Where A deposited money in bank in name of B, intending at the time to give the money to B, but always retaining the pass-book, controlling and withdrawing money from the fund, B never knowing of the deposit, and dying before A, it is held that there was neither a declaration of trust, nor a completed gift, and title to the fund remained in A. The form of the deposit, of itself, was not sufficient to constitute a prima facie declaration of trust, nor to establish an intent to give; there were no circumstances in the case to show that a trust was intended to be created; although there was an*

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*intent to give, at the time of the deposit, such intent is inconsistent with the theory of a trust; and there was no delivery such as the law requires, to perfect a gift.*

In 1866 one John O. Beaver deposited a sum of money in a savings bank, in the name of Asiel G. Beaver, his son, then 17 years old, living with his father. The father retained possession of the pass-book until his death, 22 years later, and the son never knew of the deposit. The son, who had since married, died two years before the father. The father once drew some money from the account, and signed a receipt in the pass-book in his own name.

The action was to determine whether the money belonged to the father's or to the son's estate; it is held to belong to the father's, there being neither a completed gift, nor a declaration of trust.

The court said that the question turns upon the legal effect of the deposit, in connection with the attendant and subsequent circumstances. There is no warrant under the decisions of this court to uphold the deposit as a trust. There was no declaration of trust in this case, in terms (as in *Martin v. Funk*), when the deposit was made, nor at any time afterwards, and none can be implied from a mere deposit by one in the name of another. To constitute a trust, there must be either an explicit declaration of trust, or circumstances which show, beyond reasonable doubt, that a trust was intended to be created.

Upon the question of gift, the court in its first review of the case held that two essentials to constitute a perfect gift were lacking (1) intent to make a gift; (2) delivery, actual or constructive.

It said that the form of deposit by one in the name of another, while consistent with an intent to give, does not, of itself, without more, authorize a finding that the deposit was made with that intent; other reasons, consistent

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with the depositor's retaining ownership, frequently surround such a form of deposit.

In the final review of the case there was a finding of fact, from new evidence, of an intent of the father, at the time of making the deposit in his son's name, to give the money to his son.

Notwithstanding this, the court finds no title passed. The intent to give was inconsistent with the theory of a trust, and looking at the transaction in the light of a gift, it was never perfected by delivery. The retention of possession of the pass-book, the effect of the bank's rules in vesting the father with exclusive dominion over the account and exclusive right to draw the money, the lack of the son's signature in connection with the bank's rules governing its relations with the depositor, made the situation such as never to have placed the son in a situation to control the account. The father never did an act equivalent to delivery; nor did the circumstances evidence a subsequent intention on his part to perfect his gift.

### A OR B OR THE SURVIVOR OF THEM.

McElroy v. National Savings Bank, (1896), 8 N. Y. App. Div. 192, 40. N. Y. Supp. 340.

*Deposit of money by a husband in a savings bank, payable to him or his wife or the survivor, upheld as a gift to the wife where she survived him, his intent to make a gift being plain, and delivery of the pass-book not being necessary to perfect it.*

James C. Bell deposited money in a savings bank, opening the account in the name of "Alida P. Bell or James C. Bell, her husband, or the survivor of them." James died prior to Alida. In a controversy between the executors of James and the administrator of Alida, who had afterwards died, as to which was entitled to the deposit,

Held, the deposit by James P. Bell of money to the credit of Alida P. and himself, with the provision that

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either of them, or the survivor, was to draw it, imports a gift to the wife in case she survives him. Delivery of the pass-book to her by the husband was not necessary to perfect such gift. The intent of the husband to that effect is very plain, and it seems that the wife had been informed of his purpose and expected to receive the benefit of it. The only question was whether he had fully perfected the gift by the delivery which the law requires.

### A OR B, EITHER OR SURVIVOR TO DRAW.

DePuy v. Stevens, (1899), 37 App. Div. 289, 55 N. Y. Supp. 810.

*An account in a bank was changed from A individually to "A or B, either or survivor to draw," The facts of the case are held insufficient to show an intent on the part of A to give B the money, or to create a joint tenancy therein by A and B; hence upon A's death, the money belonged to A's estate, and not to B.*

Mrs. Nancy Sibbalds, somewhat advanced in years, visiting one Hattie DePuy, gave the latter a check on the bank in which she kept her account payable to "new account or bearer," for the entire balance in her name. Hattie DePuy informed the treasurer that Mrs. Sibbalds was in poor health and wished to have the account so arranged that money could be withdrawn without compelling her to sign checks therefor, and the account was changed to

"Mrs. Nancy Sibbalds or Miss Hattie DePuy, either or survivor to draw."

Afterwards Mrs. Sibbalds signed a check for \$100 payable to "Hattie DePuy or bearer," and the latter received payment of that amount. After Mrs. Sibbalds' death, Miss DePuy drew \$250 upon her own check to pay for funeral expenses.

A judgment for Miss DePuy against the executrix

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of Mrs. Sibbalds for the balance in bank was reversed on appeal.

Evidence that Mrs. Sibbalds intended a gift rested almost entirely upon the testimony of Miss DePuy's mother, concerning what she had heard Mrs. Sibbalds say that the money was hers (Miss De Puy's) and to take care of it. This evidence the appellate court did not regard as satisfactory or convincing, and found it to be materially weakened by the fact that Miss DePuy filed a claim against the estate for services in transacting the decedent's banking business ranging from a time prior to transferring the account to three days after her death, indicating that when Miss DePuy filed this claim she did not suppose she had any interest in the money in bank, which virtually constituted the entire estate of the decedent.

This, and the entire circumstances of the case, lead the court to hold that the evidence, as a whole, fell short of fulfilling the requirements of the rule that to support a valid gift there must be an actual or symbolical delivery of the property donated, accompanied by an intention on the part of the donor to divest himself of all title to and dominion over the same; and likewise failed to answer the requirements of the further rule that in order to support a gift, not asserted until after the death of the alleged donor, the evidence must be clear, satisfactory and convincing.

Concluding that Miss DePuy failed to establish title by a gift *inter vivos*, the court further considered whether she took the residuum of the fund on deposit as survivor, upon the theory of the creation of a joint ownership when the deposit account was changed. The question here rested upon the same evidence, which was held not to establish an intent by Mrs. Sibbalds to create a joint tenancy. Distinction was pointed out between this case and *M Elroy v. National Savings Bank*. There the

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intent of the husband that the wife should take as survivor plainly appeared; here no such intent appeared.

### A AND B, ORDER OF EITHER OF THEM.

Mack v. Mechanics and Farmers' Savings Bank, (1888), 50 Hun, 477, 3 N. Y. Supp .441.

*A depositor changed his individual deposit account to one in the name of himself and his mother, "order of either of them," the mother signing the signature book, and the depositor telling her "this is yours." The depositor retained the bank-book until the day before his death, when he sent it to his mother to keep "it" for him.*

*The transaction is held to be a gift by the depositor to himself and his mother in joint tenancy, entitling either to draw out the whole, and upon the death of one, the entire deposit belonging to the survivor.*

Valentine Mack, who previously had carried an account in a savings bank in his own name, took his mother to the bank and had the account changed to "Valentine Mack and Mrs. Mary Mack, order of either of them."

Mrs. Mary Mack signed her name in the signature book, and afterwards Valentine showed his mother the bank book and said, "This is yours."

After Valentine's death, this contest arose between his administratrix and his mother.

The court said it could not be said this was a gift of the whole deposit to Mary, because Valentine still retained as much control over it as he conferred upon her. The deposit was in the name of both and could be drawn by either. Both, therefore, were interested in it, while it might be safely paid to either. There would be a practical difficulty in the way of Mary's drawing the money, because for a month afterwards Valentine retained the pass-book; and, as is usual, the rules of the bank required the production of the book on depositing

## BANK DEPOSITS

or drawing out money. But that circumstance, of itself, does not settle the rights of the depositors with respect to the money. There is no evidence as to their rights except the facts above stated, and the further fact that the day before his death Valentine sent the book to Mary with the message, "Tell my mother to keep it for me."

Now, if this money belonged to Valentine, and Mary as tenants in common, each would presumably be the owner of one-half. If it belonged to them as joint tenants, it would go to the survivor. The circumstances are not conclusive, but it seems to us they point to a joint tenancy, for the whole amount was payable to either; therefore, according to the terms, the amount would seem to be now payable to Mary on her demand. The delivery of the book to her accompanied by the message above quoted, would, perhaps, have been insufficient to establish a gift had the money then stood in Valentine's name. But as she then had already the right to draw the money, the possession of the book gave her complete power on that day to draw out the money for herself. The transfer of the account to the two names was a gift of some kind to Mary, and her rights do not rest solely on the delivery of the book. If the question was one of intent, then Mary has the finding of the referee in her favor.

### A, OR IN EVENT OF HIS DEATH, TO B.

Sullivan v. Sullivan, 39 N. Y. App. Div. 99, Aff'd. 161 N. Y. 554.

*A certificate of deposit drawn payable to A, or in event of his death to B, retained by A until his death, held not to divest A's title to the deposit, which upon his death belonged to his estate and not to B. The provision that in the event of A's death, it should be payable to B was invalid to transfer any future title to B, being in the nature of a testamentary disposition not in compliance with the statute of wills.*

On October 10, 1892, Catharine Sullivan deposited

## DECISIONS

with the Chemung Canal Bank \$2,000, receiving therefor the following certificate:

\$2,000.

Chemung Canal Bank.

Elmira, N. Y., Oct. 10, 1892.

Catharine Sullivan has deposited in this bank two thousand dollars, payable one day after date to the order of herself, or, in case of her death, to her niece, Catharine Sullivan of Utica, upon return of this certificate, with interest at 3 per cent per annum if held six months. Not subject to check.

No. 26638.

J. H. ARNOT, V. P.

She remained in possession of the certificate until her death, February 8, 1893, after which it was found among her papers. An intent upon her part to have the certificate so drawn that, in case of her death without having used the deposit, it could be drawn by her niece, was shown by oral testimony.

The bank having paid the deposit to the niece, this action was by the administrator of the deceased against the niece, to recover the deposit, the latter claiming that the effect of the transaction was to create a trust in her favor. Judgment was rendered against her niece, it being

Held, where a trust is attempted to be created for the benefit of a donee, a transfer of the title of the property affected, or of some interest therein, and a delivery thereof to the trustee, is essential to the validity of the trust. Here the deposit did not pass the title to the niece. It created the relation of creditor and debtor between depositor and bank. The fund remained the property and under the absolute control of the depositor. To have the effect of creating a trust in favor of the niece the contract between depositor and bank should, at the time of its execution, have divested the depositor of the title to the fund, or of some interest therein, and vested such interest



1. In the case of a deposit by A in trust for B, where there are no circum-  
 stances of fraud or undue influence, the deposit is a gift, and the property  
 passes to B at once. (See *Trusts for Children*, 1901, p. 35, *Misc.*  
*Properly of the Law of Equity*, 1901, p. 35.)

## DECISIONS

*stances indicating that a trust was not intended, entitles B to the fund on A's death.*

Mary Miller made several bank deposits in the following form: "Mary S. Miller, in trust for William R. Miller," William being a brother of Mary. Upon Mary's death William claimed the deposits. It was held that the form of the deposits presumptively established a trust. Nothing appearing to rebut this presumption and there being no circumstances tending to show that the testator intended any other relation between herself and her brother than that of trustee and beneficiary, it was held that a trust was created and that the beneficiary was entitled to the money. It was suggested that the depositor might have opened trust accounts for the purpose of evading the rules as to the amount on which each individual depositor was allowed to draw interest. As to this it was said that such a motive should not be attributed to the depositor on mere suspicion.

### A IN TRUST FOR B.

Matter of Finn, (1904), 44 Misc. Rep. (N. Y.), 622, 90 N. Y. Supp. 159.

A deposit in the name of "James Finn, in trust for Mary Finn, his wife," belongs to Mary Finn upon the death of James. Such a deposit raises a presumption in favor of Mary Finn and, nothing appearing to rebut the presumption, she is entitled to the deposit.

### A IN TRUST FOR B.

Whitfield v. Greenwich Savings Bank, (N. Y., 1882), 4 Month. L. Bul. 69.

Where A deposited money in his name "in trust for B," his daughter, it was held that this alone constituted an irrevocable trust in favor of B and that upon B's death, the fund passed to the legatee of her personal property.

## BANK DEPOSITS

### A IN TRUST FOR B.

Hyde v. Kitchen (1893), 69 Hun, (N. Y.) 280.

*A deposit by A in trust for B creates a trust which cannot be refuted by subsequent acts or declarations.*

The depositor placed a sum of money in a savings bank in her name in trust for her brother. From 1881 to 1892 she made deposits at various times. It was held that the form of the deposit raised a presumption of trust. This might be rebutted by evidence of facts and circumstances, contemporaneous with the deposit. But, in the absence of such evidence a trust would be conclusively presumed, notwithstanding evidence of words and acts, subsequent to the deposit, indicating an intention not to create a trust. What the depositor said and did, subsequently to the deposit, could not affect the original transaction.

### A IN TRUST FOR B.

Matter of Totten, (1904), 179 N. Y. 112, 71 N. E. Rep. 748.

*A deposit by one person of his money in trust for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust, merely, until the depositor dies, or completes the gift by some unequivocal act. If the depositor dies before the beneficiary, leaving the account open and unexplained, a presumption arises that an absolute trust was created as to the amount on deposit at the time of the depositor's death.*

Fanny A. Lattan died intestate in 1900. Beginning in 1886 she had numerous accounts in the Irving Savings Institution, in New York, some accounts standing in her name individually and some in her name as trustee. At various times there were sixteen of the latter class. At the same time many accounts were kept by her in other savings institutions, some in her own name simply, and others with the addition of "trustee for," or "in trust

## DECISIONS

for," some person named. It was her practice to draw from all of these accounts at will, whether they were kept in her name as trustee, or otherwise, and to close them and open others as she saw fit. She kept the pass books and no beneficiary named in any account ever drew from them except upon drafts signed by her.

This proceeding arose out of the claim of Emile R. Lattan against the administrator of Fannie A. Lattan for \$1,775.03, with interest, alleged to be due "by reason of certain deposits made by" the decedent "in the Irving Savings Institution, as trustee for said Emile R. Lattan, the moneys so deposited having been subsequently withdrawn by the decedent." It is not necessary to set forth the details of opening and closing the various accounts. The facts, however, show that the decedent altered the accounts frequently by making additional deposits, withdrawals and by changing the form of the account entirely. The accounts, which Emile R. Lattan claimed were, as stated, closed by the decedent during her lifetime. It was shown that the claimant did not learn of the existence of the accounts until more than a year after the decedent died.

It was held that there was no trust in his favor.

The court said: "The most favorable view of these facts and others of like character not mentioned does not permit the inference as matter of fact that the decedent in making the deposits in question intended to establish an irrevocable trust in favor of the respondent. Aside from what took place when the deposits were made, every act of the decedent, with one exception, is opposed to the theory of a trust. That exception is the closing of one account after the words of trust had been cancelled and the deposit of part of the proceeds in the same form as the original. This is not enough when considered with the other facts to establish an irrevocable trust. \* \* \*

In view of the practice of the decedent in doing business

## BANK DEPOSITS

with savings banks, the custom of many other persons in that regard, the various objects which people have in making deposits in the form of a trust, the retention of the pass book with the corresponding control of the deposits according to the rules of the bank, the subsequent history of the various accounts with the frequent withdrawals and changes, we think that the form of the deposits as they appear upon the books was not strengthened by the other evidence."

The court observed that it was necessary to settle the conflict in the decisions of the New York Courts by laying down such a rule as would best promote the interests of all the people in the state. After such reflection the following rule was enunciated: "A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor."

### A IN TRUST FOR B.

Weber v. Weber, (N. Y. 1880), 9 Daly 211.

The defendant deposited money in a savings bank in his name, in trust for the plaintiff, his daughter. It appeared that he made the deposit in this form in order to obtain a higher rate of interest and that he had no intention of parting with the ownership of the fund. To protect the defendant it was agreed between the plaintiff and the bank that no sums should be withdrawn without the production of the pass book, and the defendant always

## DECISIONS

retained possession of the book. It was held that no trust was created in favor of the daughter.

### A IN TRUST FOR B.

Matter of Barefield, (1904), 177 N. Y. 387, 69 N. E. Rep. 732.

*A deposit by A in trust for B will not create an irrevocable trust where it appears by positive testimony that A had no such intention.*

A daughter deposited money in trust for her mother in an account entitled "Rebecca A. R. Barefield in trust for Mary E. Rosell." The mother died and the daughter was appointed administratrix. The administratrix did not include this deposit in her account and the next of kin objected. The administratrix testified that the deposit was hers. A physician testified that the mother had declared that she had nothing to leave by will. The daughter had retained possession of the bank book. It was held that, in view of this positive testimony as to the absence of intention to create a trust, no trust was created, and that the daughter was entitled to the fund. In the opinion of the Surrogates Court in this case (36 Misc. Rep. 745) it was written: "With the exception of the manner of opening the account the case is barren of any proof showing any intent to vest title in the decedent. This method of opening an account is one that is frequently followed by persons for various reasons of their own, and the courts are perfectly familiar with the fact that it is done repeatedly without any intention of the depositor divesting himself of ownership in the money."

### A IN TRUST FOR B.

Green v. Sutherland (1903), 40 Misc. Rep. (N. Y.) 559, 82 N. Y. Supp. 878.

*A deposit in the name of A in trust for B belongs to the*

## BANK DEPOSITS

*estate of A where it appears that there was no intention to create a trust.*

An aged depositor, Maria Wildbret, being confined by illness, desired to draw money from her account. A representative of the bank called on her and it was arranged between him and one of the depositor's daughters that the account should be changed to read "Maria Wildbret in trust for Sophie Sutherland, daughter." In an action, brought after the depositor's death, by her executor, to have the deposit declared the property of the depositor's estate, it was determined that the deposit belonged to the estate, on the ground that it appeared that there was no intention to establish a beneficial interest in favor of the daughter.

### A IN TRUST FOR B.

Lattan v. Van Ness, (1905), 107 N. Y. App. Div. 393, 95 N. Y. Supp. 97.

*Where one deposits his money in the name of another person, in trust for a third person, and delivers the pass book to the trustee, but it appears that his purpose was to put his property beyond the peril of his spendthrift habits, no irrevocable trust is created.*

Louis H. Lattan opened four trust accounts in savings banks, naming his two sisters as trustees. In each case one of his four children was named as beneficiary. The pass books were delivered to the trustees. After the death of the trustees, the children brought suit against their administrators to recover the deposits. It appeared that the purpose which actuated the depositor in opening the accounts was to put his property beyond the peril of his spendthrift habits, that it might be conserved for the support of himself and his family and, in the event of his death, belong to his children. Various sums were paid to him out of the funds by the trustees, according to his needs, for a period of sixteen years up to the time

## DECISIONS

of the deaths of the trustees. He himself testified that he and his father agreed that he could not save a cent and that he put his money out of his hands fearing that he might leave his family destitute if he did not do so. It was held that no irrevocable trust was created for the reason that there was no such intent in the part of the depositor.

The depositor testified that he intended to create irrevocable trusts, "but it must not be forgotten," said the court, "that he was testifying in behalf of his children's effort to obtain from his sisters' estates the money which for a period of sixteen years had been treated as his own and paid to him for the support of himself, his wife, and presumably these plaintiffs and when the statement last quoted is read in connection with the rest of his testimony it is clear that he intended to create a tentative and not an irrevocable trust." The effect of the decision was that a mere deposit in the name of another person, in trust for a third person, accompanied by a delivery of the pass book to the trustee, is not conclusive as to the intention to create an irrevocable trust.

### A IN TRUST FOR B.

Matter of Mueller (1897), 15 N. Y. App. Div. 67, 44 N. Y. Supp. 280.

*A deposit by A in trust for B gives no rights to B, where it appears that A did not intend to create a trust.*

The account here involved stood in the name of "Henry Dohrmann in trust for Katie Dohrmann," his wife, and amounted to \$1265. In the same bank Henry Dohrmann had an account in his own name amounting to \$2447.17. It appeared that the object of opening two accounts was to get around the New York statute limiting the amount, exclusive of interest, which may be carried to the credit of an individual depositor in a savings bank, to \$3,000. It being clearly established that Henry Dohrmann did



## BANK DEPOSITS

not intend to give his wife any beneficial interest in the deposit it was held that the fund belonged to his estate and not to the wife, notwithstanding the form of the deposit.

### A IN TRUST FOR B, CREDITOR.

Matter of Hewitt, (1903), 40 Misc. Rep. (N. Y.) 322, 81 N. Y. Supp. 1030.

Edward Goodheart opened an account in trust for Robert C. Hewitt to whom, it appeared, Goodheart was indebted on two notes for \$100 each. After Goodheart's death Hewitt qualified as his executor. Upon objections being filed to the executor's account by a creditor, the executor testified that the deposit was intended as a bounty in addition to the notes. It was held that the deposit created a trust in favor of Hewitt and did not operate as payment of the notes.

### A IN TRUST FOR B.

O'Brien v. Williamsburg Savings Bank, (1905), 101 N. Y. App. Div. 108, 91 N. Y. Supp. 908.

One Ann Coote started a bank account in her name "in trust for Margaret Brown." Prior to the deposit Ann Coote declared that she did not want her husband to have the money, but wanted Margaret Brown to have it. While the deposit standing alone would not have established a trust, the declaration of the depositor, coupled with the deposit, was sufficient to create an irrevocable trust. The action here was brought by the administrator of Ann Coote against the bank and judgment was given in favor of the bank.

### A, TRUSTEE FOR B.

Hutton v. Smith, (1903), 74 N. Y. App. Div. 284, 77 N. Y. Supp. 523; Aff'd., 175 N. Y. 375, 67 N. E. Rep. 633.

## DECISIONS

*A deposit by A in trust for B, accompanied by declarations showing an intent, creates an irrevocable trust and, where A draws the money and purchases real estate with it, B can impress a lien on the realty.*

Rose Ann Coyle opened an account in her own name as "trustee, John Hutton." There was evidence that she had made declarations that she had the money in trust for John and that it was put in trust for him by his uncle. She had also declared that the real property, purchased with the trust deposits, belonged to John. John testified that he accompanied Rose Ann Coyle at the time the money was drawn out and the property purchased. It was held that the deposit created an irrevocable trust in favor of John and that he was entitled to impress a trust upon the real estate in question to the extent of the deposit.

### A IN TRUST FOR B.

*Meislahn v. Meislahn* (1900), 56 N. Y. App Div. 566, 67 N. Y. Supp. 480.

Albert Meislahn made deposits the pass-books for which read: "In account with Albert Meislahn, in trust for Augusta A. Meislahn," his daughter. It was held that the form of the deposit, coupled with his declaration that he had money in trust for his daughter established a trust. It was held that it was immaterial that the depositor had accounts in his own name in most of the banks which held the trust accounts, and that he had deposited in such accounts the maximum amount on which interest would be allowed. It could not be argued from this that his object in opening trust accounts was to be enabled to draw interest on a larger deposit than if the deposit were in his own name.

### A IN TRUST FOR B.

*Scallan v. Brooks* (1900) 54 App. Div. 348; 66 N. Y. Supp. 591.

## BANK DEPOSITS

Bridget Steggels deposited her own money "in trust for John T. Scallan," Witnesses testified that she had stated that she held the deposit for the benefit of Scallan. She retained the pass book until the day before her death when she delivered it to the executor of her will. In an action against the executor it was held that the deposit constituted an irrevocable trust, and that the money belonged to Scallan.

### A IN TRUST FOR B.

Anderson v. Thomson, (N. Y., 1885), 38 Hun 394.

William Anderson opened an account in the Williamsburg Savings Bank "in trust for William Anderson, Jr.," his son. He subsequently declared that his intention in so doing was to vest title in his son. After the death of the depositor his executor drew the deposit. The son brought action against the executor, and it was held that he could recover.

### A IN TRUST FOR B.

Weber v. Bank for Savings, (N. Y. 1878), 1 City Ct. R. 70.

A deposit in a savings bank by one person in trust for another does not alone establish a trust. There must be a delivery with intent to pass title.

### A IN TRUST FOR B.

Matter of Davis (1907), 119 N. Y. App. Div. 35, 103 N. Y. Supp. 946.

*Delivery of the pass book to the beneficiary of a trust deposit renders the trust irrevocable.*

Three trust accounts were opened, each entitled "Marian Davis, in trust for William H. Davis," the parties being husband and wife. The money belonged absolutely to Marian Davis. The beneficiary died and in his safety deposit vault were found the three pass books.

## DECISIONS

There was no other evidence tending to show the intention of the depositor. In holding that there was a valid trust the court said: "William H. Davis, the beneficiary, died before the depositor, Marian Davis, and before a revocation of the trust. Standing alone, the mere deposit of her money in her name, as trustee for him, did not establish, under the rule in the Totten case, an irrevocable trust; but the finding of the pass books in the safe deposit vault of the beneficiary necessarily implies that there was notice by the depositor of the trust to the beneficiary. Inasmuch as notice to the beneficiary is one of the examples of an unequivocal act or declaration by which the depositor completes the gift, used by the Court of Appeals to illustrate the rule, we must hold that the notice to William H. Davis completed his wife's gift to him and rendered the trust irrevocable."

### A IN TRUST FOR B.

Kelly v. National Savings Bank, (1908), 124 N. Y. App. Div. 103, 108 N. Y. Supp. 216.

*Where money is deposited by a mother in her name in trust for her daughter and the daughter is notified of the fact, the trust is irrevocable and the daughter is entitled to the deposit upon the mother's death.*

An account in the National Savings Bank stood in the name of Mrs. K. V. Beers. She gave her daughter an order for the entire amount "as per accompanying pass book." On that day the account was changed to read "Mrs. Kate V. Beers in trust for Sarah E. Kelly, her daughter." The signature of the daughter was pasted in the signature book of the bank at the place where the mother's name appeared. The mother drew interest from time to time and on one occasion the daughter drew the interest.

It was held that the facts indicated that the daughter had been notified of the deposit and that, under the case of

## BANK DEPOSITS

Matter of Totten, 179 N. Y. 112, the trust became irrevocable. Upon the death of the mother the daughter was entitled to the deposit. The fact that several years after the opening of the trust account, and on the day before her death, the mother made a change in her will indicating a different intent as to the disposition of the account could not affect the transaction which had already taken place.

### A IN TRUST FOR B.

Scott v. Harbeck, (1888), 49 Hun, 292, 1 N. Y. Supp. 788.

*A deposit by one person in trust for another creates an irrevocable trust, though the beneficiary is not notified of the deposit until the death of the depositor, and the depositor has drawn the deposit and used it in the meantime.*

The depositor, Elvira Parker, in 1860, opened a savings bank account in her name in trust for Mary Barker, who subsequently became Mary Scott. Fourteen years later she drew out the money and used it for her own benefit. Mary Scott did not learn of the deposit until after the death of Elvira Parker, when she brought suit against the latter's executors. It was held that she was entitled to recover. The deposit created a trust and it was conversion for the trustee to devote the money to her own use.

### A IN TRUST FOR B.

Jenkins v. Baker, (1902), 77 N. Y. App. Div. 509, 78 N. Y. Supp. 1074.

*A deposit by A in trust for B, though B does not know of the deposit, and it is subsequently drawn out, creates a trust in favor of B.*

The plaintiff and defendant in this case were father and daughter, respectively. The wife of the plaintiff opened an account in her own name in a savings bank, in trust

## DECISIONS

for the plaintiff and deposited in the account sums which, with interest, aggregated \$1,397.56. The account was opened in October, 1899. In May, 1900, the depositor drew out all of the account and gave \$650 of it to her daughter, the defendant. The depositor died in July, 1900, and this suit was commenced afterwards. She never made the account known to her husband, or made any declaration in respect to it. It was held that a trust in favor of the husband was shown.

### A IN TRUST FOR B.

*Williams v. Brooklyn Savings Bank*, (1900), 51 N. Y. App. Div. 332, 64 N. Y. Supp. 1021.

*A deposit by A in trust for B establishes a prima facie intent to create a trust, which is not rebutted by a failure to notify the beneficiary of the deposit, or a withdrawal of part of the deposit. Circumstances showing that deposit was made to evade interest limit of bank considered.*

A deposit of \$2,700 was made in 1894 in a savings bank in these terms, "William Williams, in trust for Owen Williams." The depositor died in 1896 leaving the account open and unexplained. Within a year after the deposit was made he drew out \$105. He never notified the beneficiary, who was a brother living in England, of the deposit, and he retained the pass book until his death. The depositor had other accounts in the same bank.

It was held that the intent of the depositor governs the question of whether or not a trust is created. The deposit, in the form in which it was made, raised a presumption that a trust was intended. This might, or might not, be conclusive, for it is but evidence of intent to create a trust; and divers motives might have dictated the making of the deposit. It appeared that the depositor had strong feelings of affection for the beneficiary, who was an invalid and earned very little on which to support his

## BANK DEPOSITS

family. This it was held was a matter to be considered in determining the depositor's intent. The retention of the pass book did not rebut the presumption of the creation of a trust. The depositor must be deemed to have retained the book as trustee, and, being a trustee he was a proper custodian. As to the failure to notify the beneficiary of the deposit the Court, through Jenks, J., said: "Knowledge of the beneficiary was not essential. Moreover, there was no personal association of the brothers, for this plaintiff lived across the sea." It was argued that, as the depositor had other sums on deposit in the same bank, his object in opening a trust account was to evade the interest limit of the bank which was \$3,000. But, in regard to this contention, the Court said: "The argument at best is speculation upon a possible motive." Attention was called to the fact that there were other banks open to the depositor. The Court further said: "The argument based upon a scheme for interest does not carry special force in any given case; for it is available in every case where the depositor's own funds in the same bank have reached the limit."

### A IN TRUST FOR B.

Robertson v. McCarty (1900), 54 N. Y. App. Div. 103, 66 N. Y. Supp. 327.

*A deposit by A of his money in trust for B creates an irrevocable trust, though A retains the pass book and B does not become aware of the deposit until after A's death. The trust was valid even as to a portion withdrawn by the depositor in his lifetime.*

In July, 1898, an account was opened in the Bowery Savings Bank, for the sum of \$3,000 in the name of "Stout Robertson in trust for Cornelius S., brother." The money belonged to Stout, who retained the pass-book until his death in February, 1899. Cornelius had no knowledge of the existence of the account until after

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Stout's death. Before Stout died he had drawn out and used \$2,000 of the deposit. The administrator did not dispute Cornelius' right to the remaining \$1,000. This action was brought against the administrator to recover the \$2,000 used by Stout. It was held that Cornelius was entitled to the money. A deposit in the form of a trust, unqualified and unexplained, creates a trust, which cannot be revoked in the absence of the reservation of a power of revocation.

### A IN TRUST FOR B.

Matter of Biggars (1902), 39 Misc. Rep. (N. Y.) 426, 80 N. Y. Supp. 214.

*A deposit by A in trust for B is a valid trust though A keeps the pass book and does not inform B of the trust. B cannot claim amounts withdrawn by A.*

The deposit in this case was by a mother in trust for her daughter. The account was opened in 1882 and, up to 1901, the mother had made forty-five deposits, aggregating about \$5,000. During the same time she made withdrawals so that at the time of her death in February, 1901, the balance was \$2,286.34. The withdrawals approximated \$2,800.00, and some of this was used for the benefit of the daughter. The mother referred to the trust account frequently but her intent seemed to be that the deposit would be the daughter's after her (the mother's) death. Nevertheless it was held that there was a valid trust in favor of the daughter. There was a good trust notwithstanding the fact that the mother had retained the pass book.

There was no trust, however, as to the amounts withdrawn by the depositor. "She was under no obligation to the beneficiary to maintain the fund at the highest point it might reach. \* \* \* The cases where such relief has been allowed presented situations vastly different from the one in the case at bar." In this case it



## BANK DEPOSITS

appeared that the beneficiary had had the benefit of some of the money withdrawn.

### A IN TRUST FOR B, A FOR B.

Weaver v. Emigrant Industrial Savings Bank, N. Y., (1885), 17 Abb. N. C. 82.

*A deposited money and received books made out "A for B" and "A in trust for B." It was held that B was entitled to the deposits as against A's administrator, though A had retained the pass-books until his death and though B knew nothing of the deposits until after the death.*

The plaintiff Cynthia S. Weaver was the daughter of Isaac S. Weaver. The latter opened accounts in four different banks. One pass-book was made out "Isaac S. Allen, for his daughter, Cynthia S. Weaver." The other three were made out in the name of Isaac S. Allen, "in trust for Cynthia S. Weaver." Isaac Allen retained the pass-books until his death. The plaintiff did not learn of the deposits until after the death of Isaac Allen, when the pass-books came to the possession of the executor. The executor refused to deliver the pass-books and these actions were brought. The banks interpleaded and the four actions were tried together. It was held that the depositor created a trust in favor of the plaintiff and that his retention of the pass-books was not inconsistent with the trust.

### A IN TRUST FOR B.

Haynes v. McKee, (1896), 18 Misc. Rep. (N. Y.) 361, 41 N. Y. Supp. 553.

Where one deposits money in his own name, in trust for another a valid trust is created although he retains the pass book until his death.

### A IN TRUST FOR B.

Cuff v. Cuff, (1907), 120 N. Y. App. Div. 225, 105 N. Y. Supp. 332.

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A father deposited money in trust for his different children. The accounts were entitled "Thomas Cuff, for daughter Annie," "Thomas Cuff, in trust for daughter Nora," etc. He subsequently declared that the deposits would go to his different children. He retained the pass-books until his death, but never in any way revoked the trusts. It was held under the case of *Matter of Totten*, 179 N. Y. 112, 71 N. E. Rep. 748, that the deposits belonged to the children as against Thomas Cuff's administrator.

### A IN TRUST FOR B.

*Matter of Collyer*, (N. Y. 1885), 4 Dem. Surr. 24.

Where a deposit was made by one person in trust for another, the fact that the depositor drew the interest does not overcome the presumption of a trust.

### A IN TRUST FOR B.

*Grafing v. Heilmann*, (1896), 1 N. Y. App. Div. 260, 37 N. Y. Supp. 253.

A deposited money in his name in a savings bank "in trust for B." He drew the interest on the deposit until the time of his death, when the question of the ownership of the fund arose.

The executor of A claimed that B had agreed to pay the money over to certain persons in accordance with a certain letter received from A during his lifetime.

He also claimed that the trust was invalid for the reason that it was intended that the money should go to B only on A's death.

It was held that a valid trust was created. A deposit of this kind, creates a trust, in the absence of facts indicating a contrary intent, even when the pass book is retained. The fact that the depositor reserved the interest for himself during his lifetime was immaterial. Nor did it make any difference that the money was to go

## BANK DEPOSITS

to B only upon A's death. This did not render the transaction a testamentary disposition. It was sufficient to validate the trust that B's interest vested at the time of the deposit.

### A IN TRUST FOR B.

Marsh v. Keogh, (1903), 82 N. Y. App. Div. 503; 81 N. Y. Supp. 825.

*The withdrawal of part of a trust deposit does not revoke the trust.*

After opening three accounts reading "Louisa B. Marsh in trust for Horace B. Marsh," the depositor drew out the greater part of two of the accounts. At her death the accounts were left open and unexplained. It was held that the beneficiary was entitled to recover from the depositor's administrator the aggregate amount of the deposits, as though there had been no withdrawals. Said the Court: "We cannot infer, in the face of her deposits and the character of the accounts, that she had no intention of creating valid and irrevocable trusts simply from the circumstances that she from time to time depleted the deposits. A mere diversion of the trust fund could not destroy the trust and we have nothing more than this naked fact. I think we must give judgment to the plaintiff in such sum as represents the aggregate of the several deposits, as if standing intact. Interest must be allowed at the legal rate."

It was also held that the retention of the pass books by the depositor was not inconsistent with the creation of valid trusts.

### A IN TRUST FOR B.

Tierney v. Fitzpatrick, (1907), 122 N. Y. App. Div. 623, 107 N. Y. Supp. 527.

*The withdrawal of a deposit by the depositor terminates a tentative trust. A declaration by the depositor that he in-*

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*tends the beneficiary to have the fund after his death is not sufficient to render the trust irrevocable.*

A father opened an account in trust for his son. The account was entitled "Launcelot J. Tierney, in trust for Frank Tierney." The depositor delivered the book to his son and it was placed in a safe in the son's house. The depositor frequently took the book, for the purpose of making a deposit, on having the interest written up, and would return it later to the son's house. It did not appear that the father ever asked permission when he wished to take the book. The depositor made several statements which indicated that it was his intention that his son should have the money after his death. On one occasion he said to one witness: "I will tell you one thing, Tim, I have fixed Frank in case of my death that he will be perfectly independent if anything should happen to him with his rheumatism to keep him away from his plumbing business." Prior to his death the depositor withdrew the account.

Following *Matter of Totten*, (179 N. Y. 112), it was held that the mere deposit in the form in which it was made did not create an irrevocable trust. The delivery of the pass-book was not sufficient to create an irrevocable trust. "We do not think," said the Court, "that this was such a giving of the book to the beneficiary as was meant by the Court of Appeals when it spoke of the gift of a bank book as an unequivocal act which would change the character of the trust from a tentative one to an irrevocable one." Nor were the declarations made by the depositor sufficient to establish an irrevocable trust. The declarations showed merely that the money had been deposited in trust for Frank and that it was intended that Frank should have it *after the depositor's death*. There was nowhere any indication of an intention to give Frank an interest in the fund *in præsenti*. Under the *Totten* case, in order to convert a tentative trust into an

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irrevocable one, there must be an "unequivocal act or declaration." This calls for something more than a declaration of intention that the beneficiary shall have the property after the depositor's death. Such a declaration, by its very terms, negatives the idea that any present interest in or right to the deposit is to pass to the beneficiary during the lifetime of the depositor and is consistent with a reservation by the depositor of the right to deal with the fund and to control it during his life.

### A IN TRUST FOR B. A OR B.

*Proseus v. Porter*, (1897), 20 App. Div. 44; 46 N. Y. Supp. 657.

*A deposit by A in trust for B, where A delivers the book to B, is not affected by subsequent deposits and withdrawals. Effect of failure to refer to deposit in will.*

Mrs. Proseus, just before sailing for Europe, opened an account in her name "in trust for Charlotte Porter," her sister. Mrs. Proseus delivered the pass book to the beneficiary, in whose possession it was at the time of the death of Mrs. Proseus. After the return of Mrs. Proseus from Europe she made deposits in and withdrawals from the account. It was contended that this conduct was inconsistent with the intention to create a trust. "Undoubtedly," said the Court, "these acts tend to disprove a trust, but they are by no means conclusive." The fact that the depositor failed to refer to the savings bank account in a will purporting to dispose of all her property was held to strengthen the indication that she believed that she had already effectually disposed of the account.

Mrs. Proseus also opened an account in the names of "Charlotte Porter or Esther A. Proseus." Mrs. Porter thereafter drew the money and retained continuous possession of the pass book until Mrs. Proseus' death. It was held that there was a valid gift to Mrs. Porter. The effect was not changed by a letter written by Mrs. Porter,

## DECISIONS

just before the death of Mrs. Proseus, in which she said: "Just before she went to Europe the last time, Mrs. Proseus made me go to the bank with her, and then she put the money in for me; in case anything happened to her, the money to be mine, and no one could take it from me," as this language might be regarded as indicating that Mrs. Proseus feared she might not return and, therefore, made a permanent provision for the donee at that time.

### A IN TRUST FOR B.

Macy v. Williams, (1890), 55 Hun, 489, 8 N. Y. Supp. 658; Aff'd., 125 N. Y. 767, 27 N. E. Rep. 409.

*Where a valid trust is created, and the Trustee afterwards draws the money and uses it, his estate is liable for the amount.*

One Guion opened two savings bank accounts in trust for his niece. After receiving the pass books he left them for a considerable time with the mother of the beneficiary, but they were subsequently returned to him and he drew out all the money for his own benefit. After his death an action was commenced against his executor in behalf of the niece. It was held that the executor was liable for the amount drawn.

When the depositor drew out the funds he received them as trustee for his niece. And, upon his death, his rights and liabilities as trustee devolved upon his executor.

### A IN TRUST FOR B.

Robinson v. Appleby, (1902), 69 N. Y. App. Div. 509, 75 N. Y. Supp. 1, Aff'd. 173 N. Y. 266, 66 N. E. Rep. 1115.

*A deposit in form of a trust unqualified and unexplained creates a trust at the time, which once legally established cannot be revoked, in the absence of a revocation of the power of reservation.*

In 1887 an account in the sum of \$2,695 was opened

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in a savings bank, "Helen C. Pratt in trust for Freddie Hemenway Robinson." She made subsequent deposits and withdrawals and in 1893, when the amount on deposit was \$2,740, she had the deposit transferred to a new account, entitled as the original account, but with this note appended: "Not to be paid to F. H. R. until he is 30 years of age." The pass book was always retained by the bank. Mrs. Pratt signed a paper which read: "I desire to open an account with the Riverhead Savings Bank in my name in trust for Freddie H. Robinson. Said account to be governed by the By-Laws, Rules and Regulations of the said institution. After my death the balance then due on said account is not to be payable to said Freddie H. Robinson until he is thirty years of age." In 1904 the beneficiary died and four days later Mrs. Pratt drew the money out of the bank. After Mrs. Pratt's death the administratrix of the beneficiary brought suit against Mrs. Pratt's executors.

It was held that a trust was created by the original deposit and that, not having reserved a power of revocation, she could not revoke the trust, and that, therefore, her subsequent acts were not evidence of her original intention. It was also held that interest should be allowed on the amount drawn from the bank after the beneficiary's death from the date of the withdrawal.

### A IN TRUST FOR B.

Matter of Pierce, (1909), 132 N. Y. App. Div. 465, 116 N. Y. Supp. 816.

Where a father deposited money in his name, in trust for his children, placed the pass books in a deposit box, to which the children had access, stated that the money would belong to them upon their becoming of age and, at that time, declared that the money was theirs, but that it would be better to leave it as deposited, it was held that the trust became irrevocable before the depositor's

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death and that the funds were not subject to a tax under section 220 of the New York Tax Law, imposing a tax upon the transfer of property made in contemplation of the death of the transferor, or intended to take effect in possession or enjoyment at or after his death.

### A IN TRUST FOR B.

Matter of Smith, (1903), 40 Misc. Rep. 331, 81 N. Y. Supp. 1035.

*A deposit by A in trust for B, with intent that B shall have the money only in case he survives A, does not create an irrevocable trust.*

Ellen M. Smith deposited money in a savings bank in her name, "in trust for Patrick J. Smith," her husband. Patrick Smith died and the depositor afterwards drew out all the money. She had always retained the pass book and there was no evidence that she had ever informed her husband of the trust deposit, or that he ever had any knowledge of it. Mrs. Smith testified that, at the time of opening the account, it was her intent that her husband should have the money only in case he survived her. It was held that there was no trust which the administrator could enforce.

### A IN TRUST FOR B.

Washington v. Bank for Savings, (1901), 65 N. Y. App. Div. 338, 72 N. Y. Supp. 752, Aff'd., 171 N. Y. 166, 63 N. E. Rep. 831.

*Where a depositor opens an account in trust for a fictitious person, the money, upon the death of the depositor, belongs to the depositor's estate.*

Two savings bank accounts were entitled "Margaret Hunter in trust for son John," and "Margaret Hunter in trust for son Thomas." After the death of Margaret Hunter her administrator brought suit against the bank for the money. Neighbors of the depositor testified that



## BANK DEPOSITS

they had never seen or heard of any children belonging to her, and no witness was produced who had ever seen such children. If the depositor's statements to the bank, at the time she opened the accounts, were correct the sons must have been born within six months of each other and at a time when she was upwards of fifty years of age. It was held that this was sufficient to show that the depositor never had any sons. The accounts, therefore, were opened for her own benefit and the money, at her death, passed to her administrator.

### A IN TRUST FOR B.

Matter of United States Trust Company, (1907), 117 App. Div. 178; Aff'd., 189 N.Y. 500, 81 N. E. Rep. 1177.

*The death of the beneficiary before the depositor terminates a tentative trust.*

In 1873 accounts were opened in two different savings banks in the name of "Alonzo W. Balch in trust for David C. Balch," the latter being the son of the former. A single withdrawal was made on each deposit in 1876 and later various deposits were made to the credit of each account. David died in 1902 and one year later Alonzo died. The executors of each estate claimed the deposit. There was evidence that Alonzo's attention was called to the bank books after the death of his son and that he did not act in the matter. There was no evidence other than the form of the deposit tending to show the intention of the depositor. It was held that the deposit constituted merely a tentative trust, which never became absolute, and that the death of David before that of the depositor terminated the tentative trust. The deposits belonged, therefore, to the estate of the depositor.

### A IN TRUST FOR B.

Garvey v. Clifford, (1906), 114 N. Y. App. Div. 193, 99 N. Y. Supp. 555.

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*A tentative trust is terminated by the death of the beneficiary. Effect of trust in favor of fictitious person.*

In February, 1890, Patrick Sheedy deposited \$3,000 in the Bowery Savings Bank in New York City, under the following title, "Patrick Sheedy, in trust for Johanna Sheedy." Patrick kept the book and no one except himself and the bank had any knowledge of the deposit during his lifetime. Patrick had a sister, Johanna Sheedy, who, thirty years before the time of the deposit, married and took the name of Dwyer. She and Patrick were on friendly terms and he visited her regularly up to the time of her death, which occurred in 1898. No change was made in the account after her death. Patrick continued to draw the interest until his death in 1903. It was held that there was no trust in favor of Johanna Dwyer. In the first place he used a fictitious name as beneficiary. In the second place, if there was a tentative trust in favor of Johanna Dwyer, it was revoked by her death.

### A IN TRUST FOR B.

*In re Bulwinkle*, (1905), 107 N. Y. App. Div. 331, 95 N. Y. Supp. 176.

*A tentative trust is terminated by the death of the beneficiary.*

The residuary legatees under the will of Mary Ann Dugard claimed a savings bank account, entitled "Mary Ann Dugard in trust for Lilly M. Lahey." The children of Lilly M. Lahey also claimed it. It did not appear that the pass-book was ever delivered to the beneficiary or that the fact of the existence of the deposit was ever communicated to her. It was shown that her death occurred before that of the depositor, and that after the death of the beneficiary the depositor continued to place money in the account. When the pass book came to the possession of the depositor's executors it was found that the words "in trust for Lilly M. Lahey" were obliterated

## BANK DEPOSITS

by pencil marks. It was held that the tentative trust ended with the death of the beneficiary. The deposit belonged to the estate of Mary Ann Dugard.

### A IN TRUST FOR B.

Rush v. South Brooklyn Savings Institution, (1909), 65 Misc. Rep. (N. Y.) 66, 119 N. Y. Supp. 726.

*A notice of intention to withdraw revokes a tentative trust.*

A deposit was made in the name of "Lizzie Owens in trust for Lizzie Owens." It was shown that the beneficiary was a fictitious person. During her life time the depositor attempted to withdraw the deposit. But at that time the bank was insisting on its statutory right to sixty days' notice of withdrawal, because of the then existing financial disturbance in the City of New York. In an action by the executor of the depositor's will against the bank it was held that this constituted a complete revocation of the trust and that the fund belonged to the depositor's estate.

### A IN TRUST FOR B.

Hemmerich v. Union Dime Savings Inst., (1911), 129 N. Y. Supp. 267.

*Where one deposits money in his name in trust for another, the beneficiary cannot compel the bank to pay the fund to him during the lifetime of the trustee, without making the trustee a party.*

In March 1907 the owner of \$1,000 deposited it with the Union Dime Savings Institution in New York in his own name, in trust for his daughter. Shortly after he disappeared and was not subsequently heard from. The daughter sued the bank for the deposit without making the trustee, her father, a party. Both parties agreed that an irrevocable trust was created. The bank contended that its only obligation was to the depositor and that it could make no disposition of the fund, so long as

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he continued to be trustee, without notice to him and an opportunity afforded him to be heard. The daughter claimed that in creating the trust the father had made an absolute gift to her. It was held that, although the facts might show an absolute gift, or an irrevocable trust, the bank was not bound thereby until it received notice of the termination of the trust by the death of the donee or donor, or by some direct notice by the donor during his lifetime.

### A IN TRUST FOR B.

Boone v. Citizens' Savings Bank, (1881), 84 N. Y. 83.

*A deposited money in trust for B. Upon A's death the bank paid A's administrator. It was held that such payment discharged the bank and that B could not recover from the bank.*

In 1866 Susan Boone deposited \$500 in the defendant bank "in trust for Christopher Boone." Mrs. Boone drew a part of the interest, but it does not appear for what purpose she used it. After Mrs. Boone's death the bank paid the deposit to her administrator. The by-laws of the bank provided that payments to persons producing pass books would discharge the bank and that on the death of a depositor the deposit might be paid to his legal representatives. The administrator of Christopher Boone brought this action against the bank for the deposit.

Martin v. Funk (75 N. Y. 134, *supra*), determined that a similar deposit rendered the depositor a trustee. It also determined that, in an action by the beneficiary against the administrator of the trustee and the bank, the beneficiary was entitled to the delivery of the pass book and to receive the money from the bank. But the question here was as to the rights of the beneficiary where the bank had already paid the deposit to the trustee's administrator. It was held that such a payment discharged the bank,

## BANK DEPOSITS

there having been no notice of claim by the beneficiary. The contract of the bank was to pay the deposit to Susan Boone, trustee, upon demand. What the nature of the trust was it neither knew, nor was bound to inquire. The obligation to pay was strengthened by the provisions of the by-laws above mentioned. Upon the death of Susan Boone, her right to demand payment devolved upon her administrator. When he produced letters of administration and the pass book, the bank had no alternative but to pay. It had no right to inquire into the character of the trust, and owed no duty to the beneficiary, until the latter, by notice, or forbidding payment, or demanding it for himself, created such a duty on the part of the bank.

### A IN TRUST FOR B.

Fowler v. Bowery Savings Bank, (N. Y. 1888), 47 Hun, 399.

*A deposited money in trust for B. It was held that a payment to A's administrator did not discharge the bank, where the bank had notice of B's claim.*

John White made deposits in the defendant bank in trust for his wife Elizabeth White. John White died and later Elizabeth died. In an action by the executor of Elizabeth White the bank's defense was that it had paid the executor of John White, under the authority of the case of Boone v. Citizens' Savings Bank (84 N. Y., 83, *supra*). But it here appeared that, before the payment to John's executor, the bank had notice of the claim of the estate of Elizabeth. The plaintiff, that is the executor of Elizabeth, testified that he called at the bank, exhibited his letters testamentary, and was told by an officer that the deposit would be paid to him upon producing the pass-book. There was no doubt of the sufficiency of the notice. The bank was, therefore, not

## DECISIONS

justified in paying the executor of John and was liable for the amount to the executor of Elizabeth.

### A FOR B.

Ficken v. Emigrant Industrial Sav. Bank, (1900), 33 Misc. Rep. 92, 67 N. Y. Supp. 143.

*When a deposit is made by A for B and the bank pays the money to B's father, who produces the book, it must pay over again to B.*

The grandfather of a minor, in 1889, deposited a sum to her credit under the following title "James Reid for Clara M. Reid." In 1894 Charles Reid, father of Clara, presented the pass book and the deposit was paid to him. Some years later, when Clara Reid, who had meantime become Clara Ficken, found out what had been done, she brought this action against the bank. The bank defended on the ground of its by-laws, which contained the usual provision that payments to persons producing pass-books would be valid to discharge the bank. It was held that this did not absolve the bank. The bank was fully advised of all the facts. It knew, when it paid Charles Reid, that he was neither the depositor, nor the beneficiary, of the fund. The bank was, therefore, compelled to pay the fund over again to the beneficiary.

### A AND B.

West v. McCullough, (1908), 123 N. Y. App. Div. 846, 108 N. Y. Supp. 493; Aff'd., 194 N. Y. 518, 87 N. E. Rep. 1130.

*A deposit by a husband in the name of himself and his wife, in the absence of evidence of a contrary intention, creates a right of survivorship in the wife, though he retains the bank book and makes withdrawals.*

A savings bank account was opened in the names of "Hester A. McCullough and George W. McCullough," the parties being husband and wife and the deposit being

## BANK DEPOSITS

made by the husband. No deposits were added. The husband retained the pass book and made several withdrawals. The wife made none. The husband died, and afterwards the wife. Her administrator sued the bank for the balance and the bank caused the administrator of the husband to be interpleaded, as he also claimed the deposit.

It was held that the making of the deposit evidenced an intention on the part of the husband to benefit his wife to the extent of a right of survivorship in the fund, and that nothing remained to be done to effectuate such intention.

“ It may be that the husband’s right to confer upon the wife this peculiar estate or interest, or right of survivorship only, simply by making a deposit or investment in their joint names, was an outgrowth of doctrines applicable to the status of husband and wife at common law; it was declared to rest upon the presumption that by doing that the husband intended to benefit the wife. As he could not thus benefit her during their joint lives, he having the right to reduce to possession even her own choses in action, it followed that he must have intended to give her the right of survivorship, and it was decided that he could do that without the formalities necessary for a gift *inter vivos* or *causa mortis*. A rule based on human experience, acted upon for many years in the light of judicial decisions, ought still to hold good, and I am unable to perceive why an additional requirement, *i.e.*, delivery, should be imposed simply because the wife’s disabilities have been removed by statute. \* \* \*

Joint tenancies of savings bank deposits may, however, be created, if so the parties intend, irrespective of whether the tenants be husband and wife, and in such case the right of survivorship exists. The question then is one of intention, to be determined by presumption in the absence of other proof. In case a person deposits his own

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money in a savings bank in the name of himself and another, not his wife, the presumption is that it was done for purposes of convenience only. But in the case of husband and wife the courts have said, and I think experience has shown, that the husband is presumed to have intended to benefit the wife to the extent at least of conferring upon her the right of survivorship; and as it has uniformly been held that the husband could do that without creating a joint tenancy and without delivery, that rule should be adhered to."

### A AND B.

Platt v. Grubb, (1896), 41 Hun, (N. Y.) 447.

*The survivor is entitled to a deposit in the joint names of a husband or wife.*

Isaac Worrall deposited \$1,500 in the joint names of himself and his wife in a savings bank. The money belonged to the husband. After his death the deposit was included in the inventory of the husband's estate with the wife's consent. The wife having acted in ignorance of her rights, and the parties not having taken any steps to their injury in the matter, it was held that the wife had not estopped herself from claiming the fund. After the wife's death the wife's executor sued the executor of the husband for the deposit. It was found as a fact by the court that the money was so deposited because it was desired and intended that either might draw the whole or any part during their joint lives, and that on the death of either the survivor should be the owner. It was held that, by reason of the unity of husband and wife, an obligation taken in their joint names enures to the benefit of both, and the whole goes to the survivor.

### A AND B.

Moore v. Fingar (1909), 131 N. Y. App. Div. 399, 115 N. Y. Supp. 1035.



## BANK DEPOSITS

*A deposit by a husband of money in the joint names of himself and his wife imports a gift to her; she has an equal right with him to draw during their joint lives and absolute title in case she survives.*

William S. Smith opened a bank account entitled "William S. and Augusta C. Smith," Augusta being the wife of William. About ten years after the account was opened it was changed by the addition of the words, "Payable to either or the survivor." The wife survived the husband. After her death her administrator and the administrator of her husband's estate both claimed the deposit. A verdict in favor of the husband's administrator was reversed on appeal and a new trial was ordered.

In the opinion it was said: "I think it is within the authorities to say that where a husband deposits his money in a savings bank in his name and that of his wife with the account 'payable to either or the survivor,' as was the case here, the account on its face imports a gift of the fund to her and that she has such an interest in it as gives her the equal right with him to draw it during their joint lives and vests her with its absolute title in case she survives him. \* \* \* There are authorities, however, to the effect that the mere form of the account alone will not be regarded as conclusively establishing the intent of the person making such deposit, to give the other a joint interest in or ownership of the fund. The authorities all recognize that the fact that the donor and donee are husband and wife is of great materiality in determining the intent of the parties, and that in such cases the unity of husband and wife is an important element in determining the right of survivorship."

### A AND B.

Murphy v. Franklin Savings Bank, (1909), 131 N. Y. App. Div. 759, 116 N. Y. Supp. 228.

Where a deposit stands in the joint names of a man and

## DECISIONS

his wife, and, by the terms of the deposit, the signatures of both are required to draw, the husband is a necessary party defendant to an action by the wife against the bank to recover the fund. The wife having received a letter from the husband, who had gone to Alaska, the order, permitting service of the summons on him by publication, should not have dispensed with service by mail.

### A AND B.

Wood v. Zornstorff, (1901), 59 N. Y. App. Div. 538, 69 N. Y. Supp. 241.

*Whether or not the survivor is entitled to a joint deposit depends on the intention of the parties and is a question for the jury.*

An account standing in the name of Frederick Weitz was transferred to his name and Catherine Zornstorff, his daughter. After his death the daughter drew out the money and the executor brought suit against her. A number of deposits were made after the account was transferred, but it did not satisfactorily appear who was responsible for them. The daughter always retained possession of the pass book but it appeared that the father had demanded it from her at various times and that she had promised to turn it over. She had never suggested that the survivor was entitled to the fund, nor had she ever disputed his right to the pass book. It also appeared that the father had made several legacies in his will, and had made his daughter the residuary legatee, and that the deposit was the only property upon which the will could operate. It was held that the ownership of the deposit depended upon the intention of the parties and that, under the circumstances, it was a question for the jury.

Said the Court: "It may have been placed in the names of the two either to assure the title in the survivor as a matter of convenience for this father in his advanced

## BANK DEPOSITS

years to enable his daughter to transact the business for him, and it is for the jury, taking into consideration their relations and all the facts and circumstances, with the deductions to be properly drawn therefrom, to determine where the truth lies."

### A AND B.

Matter of Barefield, (1904), 36 Misc .Rep. (N. Y.) 745, 74 N. Y. Supp. 472; Aff'd., 177 N. Y. 387, 69 N. E. Rep. 732.

A daughter deposited her own money in the joint names of herself and her mother. The daughter survived and it was held that she, and not the mother's estate was entitled to the deposit. "The rule is well established," said the court, "that if one person deposits his own money in a savings bank in the joint name of himself and some other party, this indicates an intent to vest the title to the money in the survivor and that the depositor remains the owner of the fund. In this case the daughter, being the owner of the fund and the survivor, she "was unquestionably entitled to draw the same from the bank."

### A AND B.

Schwind v. Ibert, (1901), 60 N. Y. App. Div. 378, 69 N. Y. Supp. 921.

*A deposit by A in the names of A and B, coupled with a declaration by A that the money was put in the bank for B, constitutes neither a gift nor a trust where A retained exclusive control of the deposit.*

The deposit in question in this case was made by M. Barbara Schwind in the names of "M. Barbara Schwind and Emma Schwind," the latter being the daughter of the former. The deposit, which amounted to \$3,115.80, all belonged to the mother and represented the earnings of a liquor business which she conducted. A brewing company which had loaned money to the depositor ob-

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tained a judgment against her. Upon her examination in court Barbara testified that the money was hers and not her daughter's. At the time of opening the account she said nothing to the officers of the bank about it. The signature of the daughter was not left at the bank, and Barbara always retained possession of the pass-book. The only evidence to the contrary was the statement by Barbara, who testified "I put the money there for my daughter so that she may have something to live on," and "I said to the girl I am putting this money in the bank for you." These facts were held to constitute neither a gift to, nor a trust in favor of, the daughter.

### A AND B, EITHER TO DRAW.

*In re Meyers' Estate*, (1911), 129 N. Y. Supp. 194.

*The mere form of a deposit in two names, either to draw, is not sufficient to establish an intent on the part of the depositor to give the other a joint interest with the right of survivorship.*

Lætitia M. Meyers deposited \$46,000 with the Farmers' Loan & Trust Company of New York in her name and that of her daughter, either to draw. After her death the question arose as to whether the deposit was subject to the statutory inheritance tax. The executrix of the depositor contended that it was a joint account, passing to the survivor, and, therefore, not subject to tax. It was held that the mere form of the deposit would not be regarded as sufficient to establish an intent on the part of the depositor to give the daughter a joint interest with the right of survivorship. Any presumption in favor of a joint account was negated by instructions which the depositor subsequently gave to her attorney to invest \$20,000 of the deposit for her daughter and \$20,000 for her granddaughter. At the depositor's death the money belonged to her and was subject to the tax.

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### A AND B, EITHER TO DRAW.

Whitlock v. Bowery Savings Bank, N. Y. Daily Reg., Nov. 22, 1883.

An account kept in the name of a woman was, upon her marriage, changed to her married name, and afterwards to the name of herself and husband, "either to draw." The money deposited in the account after the marriage represented the husbands earnings. It was held that, except for the payment of his debts, the husband intended that the money should belong to this wife in case she survived him. Hence the administrator of the husband could not maintain an action against the bank, the deposit having been paid to the wife, except to the extent of the claim of a debtor of the husband, of which claim the bank had notice before the payment to the wife.

### A AND B, EITHER TO DRAW.

Slee v. Kings County Savings Institution, (1903), 78 N. Y. App. Div. 534, 79 N. Y. Supp. 630.

*Where a husband deposits his money in the joint names of himself and his wife, "either to draw," without intending a gift, the wife gains no title to the money though she gets possession of the pass book without her husband's consent.*

The husband deposited his own money in the joint names of himself and his wife, "either to draw." The pass book was kept in a tin box to which there were two keys. The husband gave one of these to the wife to enable her to pay bills. She took the pass book and refused to return it. It also appeared that the husband signed a statement in which he promised to lay no claim to the money. He did not deliver this to his wife, but she found it on his desk and took possession of it, refusing to return it on his demand. It was held that there was no valid gift in favor of the wife.

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### A OR B.

Burke v. Slattery, (1895), 10 Misc. Rep. (N. Y.), 754, 31 N. Y. Supp. 825.

*A pass-book standing in the names of "A or B," husband and wife, was pledged by B with defendant for advances. The weight of evidence was to the effect that the deposit belonged to B. It was held that the making of the deposit in the joint names of A and B did not establish ownership in A.*

The account was opened in the names of "James Burke or wife Bridget," the original deposit being \$3,000. The evidence tended to show that the money belonged to Bridget. It appeared that Bridget, at the time of the trial, was insane, that the defendant had for years been paying out money for her support, and that she had pledged the bank book with him to secure the sums advanced by him. It was held that the mere fact that the deposit was made in the two names of the plaintiff or his wife did not establish his ownership of the money. The wife was therefore entitled to do with it as she pleased and could give it to, or pledge it with the defendant. The plaintiff, accordingly, was held not entitled to recover in an action for the conversion of the book.

### A OR B.

Matter of Finn, (1904), 44 Misc. Rep. 622, 90 N. Y. Supp. 159.

A deposit was made in the name of "James Finn in trust for Mary Meyers." James and Mary married and the account was changed to read James Finn or Mary Finn." It was held that, on the death of James, the deposit belonged to Mary. It did not appear in the case that the pass book was ever delivered to Mary or was ever in her possession during the lifetime of James.

### A OR B.

Matter of Ward, (N. Y. 1876), 51 How. Pr. Rep. 316.

## BANK DEPOSITS

*A deposit of money in the name of the depositor, or wife, where the depositor retains the book, does not constitute a gift to the wife.*

Richard Ward deposited money in a savings bank in the names of "Richard or Kate Ward." The depositor afterwards went to Cuba and retained the pass book in his possession until his death. It was held that the transaction lacked the essential features of a gift *inter vivos* and that the deposit belonged to the estate of the depositor as against his widow. There was no delivery of the subject as is required to establish a valid gift. The form of the deposit merely indicated that the depositor wished to enable his wife to draw the money, in case he should for any reason be unable to do so, in doing which she would act as the agent of her husband.

### A OR B.

Matter of Bolin, (1892), 136 N. Y. 177, 32 N. E. Rep. 626.

*A deposit was made in the names of "A or B," mother and daughter. The book came into the possession of the daughter, who retained it. It was held that the daughter could not claim the deposit as a gift.*

The deposit was made in an account entitled "Julia Cody or daughter, Bridget Bolin." A few years prior to Mrs. Cody's death, upon an occasion when they were both at the bank, the pass book came to the hands of Bridget Bolin, who thereafter retained custody of it. Mrs. Cody was infirm and lived with Bridget, and Bridget took care of her and had custody of all her property. It was held that there was no gift to Bridget. The law never presumes a gift. To constitute a valid gift there must be a delivery of the thing with an intent to give. The evidence must show that the donor intended to divest himself of possession and his act should be inconsistent with any other intention or purpose. In this case the

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possession of the book by Bridget was consistent with the motive of convenience.

The form of the deposit was not a fact from which an inference of transfer or gift could arise. "In the absence of other evidence," said the court, "the transaction simply evidenced a purpose of the depositor of the moneys that they should be drawn out by either of the persons named. The only presumption would be that the depositor so arranged for the purposes of convenience, and that presumption is rather strengthened by the facts appearing, of her helpless condition of blindness and of her other infirmities."

### A OR B.

Farrelly v. Emigrant Industrial Savings Bank and another, (1904), 92 N. Y. App. Div. 529, 87 N. Y. Supp. 54.

*A deposit by a mother in the names of herself and her son coupled with a delivery of the pass book to a third person, to keep for the son, gives the son a joint interest in the account and makes him the owner upon her death.*

The evidence showed that Margaret Smith caused an account, standing in her name in the Emigrant Industrial Savings Bank, to be changed so as to read "in account with Margaret Smith, or son Frank."

A short time prior to her death the depositor gave the book to her sister to keep for Frank, who was away at the time, with instructions that "if her son came back to give it to him." After her death the deposit was claimed by the temporary administrator of Frank, whose whereabouts were unknown, and by the administrator of the depositor.

Whether or not the form of the deposit, standing alone, would constitute the son a joint owner in the deposit, the Court did not state. But, taking into consideration the form of the deposit, the delivery of the pass book



## BANK DEPOSITS

and the instructions to hold it for the son, it was held that there was an intent on the part of the mother to vest in the son a joint ownership with her of the money, and that the survivor would be entitled to the whole.

In the opinion it was said that "where the deposit is in joint names and the intent appears to create the joint tenancy, its effect is to vest title to the whole fund in the survivor, and under such circumstances, whether the book be delivered to the survivor or not, or whether he ever has had it in his possession during the lifetime of his joint owner, is not of consequence, as the intent existing to create the relation of a joint tenancy, title vested in the survivor *eo instanti* upon the death of the joint owner, and no delivery of anything is necessary to effectuate such result. We think there can be little doubt in the present case but that the intent of the mother was to make her son joint owner with her in the fund, in consequence of which he took immediate title if he survived the mother. It became, however, incumbent upon the plaintiff (temporary administrator of Frank) to show such survivorship, and in this he failed." There was no evidence showing that the son was alive at the time of his mother's death and the plaintiff was held not to be entitled to the deposit.

### A OR B.

Mulcahy v. Devlin, (N. Y., 1886), 2 City Ct. R. 218.

Where money is deposited to the credit of "A or B," the bank may pay either. But after notice not to pay has been given to the bank by one of the parties, the bank will not be protected in a payment.

### A OR B.

Grafin v. Irving Savings Institution, (1902), 69 App. Div. 566, 75 N. Y. Supp. 48.

*When A deposits his own money to the credit of himself or B, and retains the pass book, and, on A's death the bank*

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*pays A's executor, B not having made any claim, the bank is not liable to B.*

In April, 1893, Diedrich Grafing deposited \$1,000 in the names of "Diedrich or George Grafing," George being his brother. Diedrich later made other deposits in the account and died in 1894. His executor presented the pass book and the bank paid over the deposit. It appeared that none of the money deposited belonged to George Grafing and that he never had possession of the pass book. He made no demand on the bank prior to the time of the payment to Diedrich's executor, and it did not appear that he even knew of the deposit until after that time. Under these circumstances it was held that the bank was not liable to George in an action brought by him to recover the amount of the deposit. If George had given the bank notice that he claimed the fund, and the bank thereafter paid Diedrich's executor, then the bank would have been liable to George, provided George could establish a right to the fund. But, the bank having had no such notice, Diedrich's intention in making the deposit became immaterial and the bank was justified in paying the executor.

This case is distinguished from the case of *Mulcahy v. Emigrant Industrial Sav. Bank*, (89 N. Y. 435) in that the account there was a joint account in which both parties had made deposits. Here the money deposited all belonged to one party. It also appeared in the *Mulcahy* case that the adverse claimant notified the bank of her claim prior to the payment by the bank to the person presenting the pass book.

### A OR B.

*Mulcahy v. Emigrant Industrial Sav. Bank*, (1882), 89 N. Y. 435.

*A and B opened a savings bank account in the names of "A or B." Each made deposits from time to time. On*

## BANK DEPOSITS

*the death of B the bank paid B's wife, though notified not to do so by A. It was held that the bank was liable to A to the extent of the deposits made by her.*

The plaintiff Ellen Mulcahy and her nephew John O'Keefe, opened an account with the defendant savings bank, the pass book bearing the following heading: "Dr. The Emigrant Industrial Savings Bank, in account with John O'Keefe or Ellen Mulcahy, Cr." No explanation, other than the relationship of the parties, was offered for opening the account in this manner. At the time the account was opened the plaintiff stated to the officers of the bank in the presence of O'Keefe that either of them, or both, could draw the money. There was no definite showing as to how much each had deposited, but it could be inferred that each contributed to the fund and that, as between themselves, their interests were several and not joint. One of the rules printed in the pass book provided that all payments to persons producing the pass book would discharge the bank. The account was opened in 1862. O'Keefe died in 1873. On the day after his death the plaintiff notified the bank that the pass book was in the possession of Mrs. O'Keefe and not to pay her. The bank, nevertheless, did pay Mrs. O'Keefe upon her presenting letters of administration upon the estate of her husband.

It was held that the bank was liable to the plaintiff for the amount which she had deposited in the fund.

The Court said: "The transaction in this case was peculiar. It is quite plain that the account was opened in the form it was, to carry out the intention of the depositors that each should have the right to draw the money, and to justify the bank in paying on the separate order of either. The right of the bank thus to pay, and of each depositor to demand payment, was not we think terminated by the death of O'Keefe. The authority O'Keefe had was *coupled with an interest*, and vested on

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his death in his personal representative. The bank agreed in substance to pay to either depositor, on the production of the pass book. The several character of its obligation was not transformed by the death of O'Keefe into an obligation to pay to the survivor alone. But when the bank had notice that the fund belonged to the plaintiff, and was prohibited by her from paying it to the representatives of O'Keefe, it could not thereafter justify a payment to the latter under the original authority or by reason of the rule in the pass book, if the money of right as between the plaintiff and the estate of O'Keefe, belonged to the former. \* \* \* We think that the plaintiff was not entitled to recover, except to the extent of her actual beneficial interest in the debt owing by the bank."

The Court further said: "If this was a bald case of a *joint deposit*, of a joint fund, belonging to the two depositors, it would seem to follow that the legal title to the deposit, vested on the death of O'Keefe, in the plaintiff, and that the liability of the bank at law, was not discharged by payment to the administrator."

### A OR B, OR SURVIVOR.

Kelly v. Beers, (1909), 194 N. Y. 49, 86 N. E. Rep. 980.

*A deposit in two names, or the survivor, coupled with other facts tending to show an intent to create joint ownership will entitle the survivor to the fund.*

An account in the Home Savings Bank of Albany, standing in the name of Kate V. Beers, was changed by the depositor to read "In account with Kate V. Beers, or Sarah E. Kelly, her daughter, or the survivor of them." It appeared that the depositor had asked one of the officials of the bank if she could arrange her account so that either she or her daughter could draw the money and so that, in case anything happened to her, her daughter could get the money without further trouble. In accordance with

## BANK DEPOSITS

this wish the account was changed as above. At the time of opening the new account the depositor handed the book to her daughter. The book was afterwards kept in a box to which both had access. Neither ever drew against it.

It was held that while the mere form of the deposit would not establish an intent to give the daughter an interest in the fund, the deposit, coupled with the other circumstances, did establish such an intent and that, on the death of the depositor, the daughter was entitled to the money. It was also held that wills, executed previous to the changing of the deposit, disposing of the money, would not interfere with or destroy a purpose, subsequently formed, to dispose of the fund through the form of the deposit, as was done.

### A OR B, OR THE SURVIVOR.

*Augsbury v. Shurtliff*, (1907), 114 App. Div. 626, 90 N. Y. Supp. 989; *Aff'd.*, 83 N. E. Rep. 1127.

*Where A and B, husband and wife, each having a separate account in the same bank, sign an order directing the bank to merge their accounts into one running to A or B, or the survivor, and the order is delivered to the bank, which makes the necessary changes, the survivor is entitled to the money.*

John C. Roof and Sarah Ann Roof, his wife, each had an account in the Jefferson County Savings Bank. On January 8, 1896, they signed an order directing the bank to have their accounts merged into an account "running to John C. Roof or Sarah Ann Roof, or to the survivor of them." In the order it was stated: "Our object being that in case of the death of either, the other may draw the whole amount."

The order was delivered to the bank, which changed each account, deeming that a better course than to merge the deposits into one account. The account of Mrs. Roof was made to read "Sarah Ann Roof and John C. Roof," on the books of the bank. No changes were made

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in the pass books. Shortly after this Mrs. Roof died. It was held that the account formerly standing in the name of Mrs. Roof belonged to the husband. It was not necessary that the pass book should have been delivered in order to perfect the husband's title. If, however, the order signed by the parties had not been delivered to the bank, and the deposits changed, until after the death of Mrs. Roof, Mr. Roof would not have been entitled to her account. Her death would have revoked the order.

### A OR B, OR THE SURVIVOR OF EITHER.

Schneider v. Schneider, (1907), 122 N. Y. App. Div. 774, 107 N. Y. Supp. 792.

*The mere opening of an account in the names of husband and wife alternately, "to either or the survivor of either," does not constitute a gift.*

The plaintiff and defendant were husband and wife. Shortly after the marriage they went to a bank, wherein was a deposit of about \$2,900, standing in the plaintiff's name. The money was transferred to a new account in the name of "Gottfried or Anna M. Schneider, pay to either or the survivor of either." The plaintiff testified that he told his wife that the change was being made so that, in case of his sickness or death, she could draw the money without trouble. He made the same statement to the cashier of the bank in his wife's presence. The bank book was placed in a tin box, the key to which lay on a dresser in the plaintiff's apartment. Subsequently the plaintiff took personal possession of the key. The defendant sent the following notice to the bank: "I beg to notify you that the account in your bank \* \* \* is not to be drawn on by my husband without my joining in the withdrawal of any sum whatsoever." The day after this notice the defendant left the plaintiff. The defendant testified that the plaintiff told her before their marriage that half of his money would be hers, and that,

## BANK DEPOSITS

after the account was changed he said: "Half of that belongs to you." The plaintiff denied this. The defendant limited her claim to one half of the deposit.

It was held that there was no gift in favor of the defendant. The mere opening of the deposit did not constitute a gift. There must be an intent on the part of the donor to give and a delivery of the thing given, in pursuance of such intent, and an acceptance by the donee. Exclusive control of the deposit was not lost by the plaintiff, nor acquired by the defendant, and the plain inference was that the account was opened to permit the defendant to draw from the account in case of necessity or sickness, and to vest her with title in case of the plaintiff's death.

### A OR B, PAYABLE TO EITHER OR THE SURVIVOR OF EITHER.

Kelly v. Albany Trust Co., (1908), 124 N. Y. App. Div. 99, 108 N. Y. Supp. 214.

*Where a deposit in the name of A was changed, at his request, so as to stand in the names of A or B, payable to either, or the survivor of either, B was entitled to the money upon A's death.*

An account in the Albany Trust Company was entitled "Special Interest Account with Kate V. Beers." The depositor signed a request that the name of Sarah E. Kelly be added "as owner and creditor with me of all moneys heretofore, or which may hereafter be deposited \* \* \* with full authority for each or either of us or the survivor of us to draw."

The pass book was accordingly changed by adding to the title of the account "or Mrs. Sarah E. Kelly, payable to either or the survivor of either." Each party furnished the bank with an authorized signature to be recognized in paying from the account. In an action by Mrs. Kelly against the bank after the death of Mrs. Beers, it was held that the plaintiff was entitled to the money.

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It was also held that a codicil to the will of Mrs. Beers, subsequent to the change in the deposit, making a different disposition of the deposit could not be introduced in evidence. The rights of the parties became fixed before the codicil was made.

A OR B, PAY TO EITHER OR THE SURVIVOR OF EITHER.

Hallenbeck v. Hallenbeck, (1905), 103 N. Y. App. Div. 107, 93 N. Y. Supp. 73.

*A deposit by a person of his money in his name and that of another gives the other prima facie title.*

Huldah Van Aernam, having a deposit in the Albany County Savings Bank, told the teller of the bank that she wished the name of her niece added so that either or the survivor could draw the money. The teller produced a printed form, which was filled out and signed, as follows:

“ Oct. 7, 1897.

“ The Treasurer of the Albany County Savings Bank will please add the name of my niece, Huldah B. Hallenbeck, as owner and creditor with me of all moneys heretofore or which may hereafter be deposited in said bank under its account No. 12413, together with all the interest which has been or may hereafter be credited to the said account, with full authority for each or either of us, or the survivor of us, to draw out from the said bank the whole or any part of such moneys or such interest.

“ (Signed) HULDAH VAN AERNAM.”

A new pass book was issued and entitled “ Huldah Van Aernam or Huldah B. Hallenbeck. Pay to either or the survivor of either.”

No further deposits were made. Two withdrawals were made by the niece, who must have produced the pass book, according to the rules of the bank. The depositor afterwards stated to a friend that she intended to do well by the niece and that she had a bank book for



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her, and that it was hers, (the niece's). The depositor retained possession of the pass book up to the time of her death.

It was held that the form of the account gave the niece *prima facie* title. Before this could be destroyed there must have been a finding that the change in the account was made for some other purpose than to pass title, for example, for the convenience of the original depositor in drawing. This not having been found, or passed on by the trial court, it was held that a dismissal of the niece's complaint was unwarranted. The judgment in favor of the defendant, the executor of the depositor, was reversed and a new trial granted.

A AND B.

A OR B.

Matter of Meehan, (1901), 59 N. Y. App. Div. 156, 69 N. Y. Supp. 9.

*Accounts opened in the names of "A and B," and "A or B," the parties being husband and wife, held to belong to the wife upon the husband's death.*

Three bank accounts were opened in the names of a husband and wife, with the husband's money. The accounts were entitled as follows: "Christopher and Mary Meehan," "Mary J. and Christopher Meehan," and "Christopher or Mary Jane Meehan." The wife conducted the husband's business subject to his direction including the making of deposits in and withdrawals from the bank accounts. The pass books were kept in the house, accessible to the husband at all times. The husband had made declarations that the deposits would belong to the wife after his death. The wife survived. It was held that the accounts belonged to her.

It was also held that the use of the word "or" between the names in one of the accounts, instead of "and "

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in no way lessened the form of the account, and as fully conveyed the idea of survivorship.

B, SUBJECT ALSO TO CONTROL OF A. A, IN CASE OF MY DEATH, PAY B.

Matter of King, (1906), 51 Misc. (N. Y.) 375, 101 N. Y. Supp. 279.

Mrs. Charlotte E. King deposited money in the Troy Savings Bank in the name of "Harriet J. Warren, subject also to the control of Aunt Mrs. Charlotte E. King." She opened another account in the Security Trust Company of Troy, N. Y., in the name of "Amelia E. Haswell, subject also to Charlotte E. King." There was evidence of admissions and declarations by Mrs. King showing that she intended these deposits for the relatives in whose names they were made. It was held that the form of these deposits, supplemented by the evidence of the intent of the depositor, established trusts in favor of the parties named. The funds, therefore, did not belong to her estate.

Mrs. King opened another account in her own name, in the bank of D. Powers & Sons, Lansingburg, N. Y. Later she went to the bank and, after a consultation with the officers of the bank, had the following written in the book: "In case of my death pay to the order of (for her own use) Mrs. Emma Harvey only." This she signed. An order to the same effect was filed with the bank. It was held to be doubtful if this form of deposit standing alone, would have created a trust. But, in this instance the court was not confined to the inscription on the book or the terms of the order for the evidence upon which to determine that a trust was intended and was created. There was testimony from a number of witnesses as to admissions and declarations by Mrs. King, which the court held established the deposit as a trust.

## BANK DEPOSITS

### IN A'S NAME—A OR B TO DRAW.

*Brown v. Brown* (N. Y., 1857), 23 Barb. 565.

*A deposited his money in his name. Both he and B, his wife, signed in the signature book of the bank. Opposite their signatures was written "to be drawn by either." It was held that, on A's death, the money belonged to his administrator, not to B.*

On the 20th day of October, 1852, Charles Brown, Jr., went with his wife to the Rochester Savings Bank, where he deposited \$500, saying that "he wanted it so that either he or his wife could draw the money." Both entered their names in the signature book, opposite which the clerk of the bank wrote the words "to be drawn by either." The account was opened with Mr. Brown, and a pass book was given as a voucher for the deposit, which he took away with him. The day after Mr. Brown's death, and before the bank was apprised of his demise, Mrs. Brown drew the money, giving a receipt signed "For Charles Brown—Christina Brown." Mr. Brown's administrator brought suit against Mrs. Brown for the deposit.

It was held that the administrator was entitled to recover. Though Mr. Brown intended that his wife should have the money at his death, he had misjudged what was necessary to be done in order to secure the money to her. It was not in the power of the court to give her the money because her husband intended she should have it. The transaction was not valid as a gift, for the reason that it was not consummated by delivery. Mrs. Brown's authority to draw the money terminated on the death of Mr. Brown.

## PENNSYLVANIA.

### A TO B IN TRUST FOR C.

*Withers v. Weaver*, (1849), 10 Pa. St. 391.

*A assigned a certificate of deposit to B in trust for C but,*

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*having made the transfer subject to his, A's, disposition and control, there is held to have been no delivery, and the money continued A's property until his death. Hence upon A's death, his wife, by virtue of the provisions of an ante-nuptial agreement, and not C, became entitled to the money.*

Jacob Weaver deposited \$400 in the Lancaster Savings Institution for which he held a certificate. Afterwards, on the eve of his marriage, an ante-nuptial agreement was entered into providing that if the intended wife should survive her intended husband, she should then have all the real and personal estate of which the husband should die seised or possessed, the husband however having entire power of disposition of his property during his life.

After the marriage Jacob Weaver assigned the \$400 certificate to one Withers in trust for M. Weaver, a son of Jacob Weaver, it being intended as a provision for the son. When the assignment was executed, Weaver directed it to be delivered to Withers saying it might be he might want some money; if he did he would call on Withers for it. One of the witnesses to the transfer said it was to be the old man's as long as he lived, and his son's at the old man's death.

On the day of the assignment Withers surrendered the old certificate to the bank and took out a new one for the principal and interest which had accrued.

After the death of Jacob Weaver, his widow brought this action against Withers for the money which had been paid over by the bank to Withers after the death of Weaver.

Held: The question is—was there a gift consummated by delivery to the donee? If there was not a gift, the money remains the property of Jacob Weaver. He died possessed of it and consequently after his decease, by the terms of his marriage contract, it passed to his widow.

From the testimony it is manifest the money, after the transfer, remained as before, subject to his disposition

## BANK DEPOSITS

and control and that it continued his property until his death. Although, then, Jacob Weaver had power, notwithstanding the ante-nuptial contract, to dispose of his property as before his marriage, yet as he has not exercised the right by delivery, the money passes to the wife by the operation of the contract.

### A TRUSTEE FOR B.

Dickerson's Appeal, (1886), 115 Pa St. 198, 8 Atl. Rep. 64.

This case involves a trust of bonds and bank stock. A purchased bonds and executed assignments thereof to himself, as trustee for his sons, which he delivered to the issuing company; also indorsed on envelopes containing the bonds that they were held in trust for his sons. A also purchased bank stock, which with a declaration of trust that he held the same in trust for his daughter, he deposited with the issuing bank. Afterwards, A, in his will, referring to the bonds and stock, recited that as "no terms of trust were declared," he held the bonds and stock in trust for his children on certain declared trusts, which qualified, to some extent, the trusts as originally created. Upon A's death, it was held that, A having created absolute and unconditional trusts in favor of his children, they would be upheld as against the claim of the widow of A; nor could A, by his will, annex special terms or qualifications not expressed in the original declarations of trust.

### A TRUSTEE FOR B.

Estate of Hugh Gaffney, (1891), 146 Pa. St. 149, 23 Atl. Rep. 163.

*A deposited money in bank in the name of "A, trustee for B." Upon his death,*

*Held: A's making the deposit in this form created a prima facie trust in B's favor. Upon the face of the bank book the money belonged to B, and there is not sufficient evidence in the case to rebut this presumption.*

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Hugh Gaffney died on August 21, 1888. From 1881 to the time of his death he made his home as a boarder with Polly McKim, a widow; until about January 1, 1888 when he became seriously ill, he paid his board at the rate of \$17.00 per week; after that date Mrs. McKim had to nurse him and care for him as a child, as he suffered from paralysis, was almost blind, and became deranged, but no agreement was made allowing her a greater rate for her services. By his will dated January 7, 1884 he gave a legacy of \$100 to Mrs. McKim.

At the time of his death, Hugh Gaffney had two deposits with the Johnstown Savings Bank, one of \$2,000 in his own name and one of \$560 in the name of

“Hugh Gaffney, trustee for Polly McKim.”

After his death Mrs. McKim presented to his executors a bill for \$800 for boarding, nursing and caring for him, which was refused, but she was paid \$200 which amount the executors thought proper. Concerning the trust deposit, one witness testified that Hugh Gaffney told him “he had been to town and put money in the bank for Aunty McKim” but did not mention the amount of the deposit. The treasurer of the savings bank testified that “Hugh Gaffney deposited money in the Johnstown Savings Bank for Polly McKim” in his name as trustee for her. This witness produced the books of the bank showing the deposit and stated further that “according to the rules of the bank this money would be paid to Polly McKim in case of the death of Hugh Gaffney; he controls during his life.”

At the time of his death, Polly McKim had possession of the bank book and other papers of Hugh Gaffney and did not want to give up the bank book to the executors, but finally did so upon threats. The deposit amounting, with interest, to \$660 was drawn out by one of the executors' attorneys.

The auditor found that the deposit of \$660 belonged to

## BANK DEPOSITS

the estate of Hugh Gaffney, but the Supreme Court reversed his decree and held that title was vested in Polly McKim.

Held: The auditor was in error in finding that the money belonged to the estate of Hugh Gaffney. Granted there was no direct evidence of a gift, there is evidence of a trust. This appears upon the face of the bank book, as well as upon the books of the bank. It was contended that Mr. Gaffney never intended that the money should go to Mrs. McKim, that his only object in depositing the money in her name or in trust for her was to increase his deposit in bank over the limit of \$2,000. But of this there was not a word of reliable testimony, and we think this case is ruled by *Smith's Estate*, 144 Pa. 428. Hugh Gaffney made this deposit in his name as trustee for Polly McKim, and the deposit so stood at the time of his death. An argument was based upon the allegation that he never delivered the deposit book to Polly McKim. This, however, was not necessary as it would have been in the case of a gift *inter sese*. The book was found in her possession after Gaffney's death, and the executor of Gaffney, insisting upon its surrender, it was given up; and there is evidence that she surrendered it only when threatened with legal proceedings and a visit from the sheriff.

We have, then, the case of a deposit on the books of the bank of a sum of money in the name of Hugh Gaffney, trustee for Polly McKim. This makes out at least a *prima facie* case for the latter. Upon the face of the bank book the money belonged to Polly McKim and there is not sufficient upon the record to rebut this presumption. This money should have been awarded to the administrator of Mrs. McKim.

## A AND B; EITHER TO DRAW.

Estate of Thomas M'Garvey, (1893), 5 Delaware Co. 440.

## DECISIONS

*A, having on deposit \$500 of her own money, drew a check for \$100 to B, her husband, which he admitted was a loan to him. Afterwards A withdrew her deposit, and made a new deposit in the name of "A and B; either to draw." At different times B drew out various sums by check, from this last named deposit. After B's death,*

*Held: The first \$100 being a loan by A to B, the presumption is that the subsequent withdrawals by B, were loans and not gifts by A to B, and the burden of proof is upon B's estate to show they were gifts and not loans.*

Mrs. M'Garvey, widow of Thomas M'Garvey, at the time of her marriage September 21, 1882, then late in life, had on deposit \$500, undoubtedly her own money. On August 17, 1883, she drew a check for \$100 as a loan to her husband. By a codicil to his will, dated in 1886, the husband admitted this \$100 was a loan to him. He gave her nothing to show for it and without the acknowledgment in the will, she would have had no evidence of the loan.

Mrs. M'Garvey afterwards personally drew her money from the bank and deposited it in the name of herself and her husband "either to draw." On June 29, 1887, the husband drew by check \$100; October 25, 1888, \$50; May 9, 1889, \$50; December 1, 1890, \$50. All these checks, it will be observed, were drawn after the date of the decedent's will.

The auditor of the estate of Thomas M'Garvey held that this money so drawn by the decedent was a gift from Mrs. M'Garvey, and not a loan by her, and that the burden is upon her to prove they were loans, which he held had not been done to his satisfaction.

The Orphans' Court of Delaware County holds the auditor was in error.

Held: It would seem reasonable that if the first \$100 M'Garvey received of his wife's money was a loan, all of it was. Wormley's Appeal, 137 Pa. 101, clearly de-



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cides that wherever the money of the wife is traced to the husband's hands, the law presumes she loaned it to him. In that case her money had been given to the husband 26 years before his death, during which long interval she never claimed either principal or interest. Yet it was held, reversing the court below, that it was a loan, and that the burden was on the husband's heirs to prove it was a gift, failing in which, the law presumed it was a loan. The probability is that if the husband's will had been made after the receipt of the balance of the money, he would have provided for its repayment just as he did the \$100, borrowed before the making of the codicil.

The auditor was in error in holding the burden was upon the widow. He should have cast the burden upon the other side.

### A, AND WIFE.

Estate of William L. Griffiths (1895), 1 Lackawanna Legal News, 311.

*A, having money on deposit in his own name, had the account changed to "A and wife." A told his wife he had put her name with his in the account, so that when she wanted it, she could get it. A having died,*

*Held: By placing the account in this form, with the purpose of giving the wife the same control of the deposit as A had, and notifying the wife of the change, there was a completed and fully executed gift; the ownership was changed from an individual, to a joint ownership of husband and wife, and the wife, as survivor, is entitled to the deposit.*

In September, 1880, William L. Griffiths opened an account with the Scranton Savings Bank and from time to time, at various intervals, added to and withdrew from it. With his first deposit he received a pass book. Up to July, 1887 the account stood in his name. Subsequently, to the name of William L. Griffiths at the head of the account, the words "and wife" were added and the

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name "Mrs. Elizabeth Griffiths" was written in pencil above it. The former addition was in the handwriting of a teller of the bank, since deceased; the latter in that of the assistant cashier, who was not called as a witness. The account on the page where these matters appear was carried down at least as far as February 14, 1890, as appears by the entry of \$100 drawn out on that day. The books of the bank afforded no light upon the subject of the change in the account and the cashier had no personal knowledge of it; all he could say was that the rules of the bank forbid any change in the title of an account without express authority from the depositor. A daughter, Lizzie, however, testified that a year or two before her father's death she heard him say in her mother's presence, that he had put her name with his in the account "so that when she wanted it she could get it" as well as himself, and that this was stated upon several occasions.

The question at issue is the title to the money on deposit which was claimed by Mrs. Griffiths, and the executors of the estate of Mr. Griffiths. The bank recognized the right of Mrs. Griffiths by allowing her to draw upon the fund after Mr. Griffiths' death.

Held: From the evidence it satisfactorily and with reasonable certainty appears that some time prior to his death, Mr. Griffiths had the officers of the bank change the account upon his pass book so that it should stand in the joint names of himself and wife, that his purpose in so doing was to give her the same control over it as himself, and that he notified his wife both of what he had done and why he did it. The only question is whether this sufficiently establishes a gift of the fund to Mrs. Griffiths.

The legal effect of an account in the joint names of husband and wife is not in dispute; on the death of either, it belongs to the other by the right of survivorship. Had the present account, therefore, been originally

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opened in the name of Mr. and Mrs. Griffiths, it would now unquestionably belong to her. But by the change of the account by Mr. Griffiths from his own name to that of himself and wife, it was thereafter impressed with the same characteristics as though it had been so originally opened. While this was a gift, it was fully executed. The bank was notified and its officers made the requisite change upon his and its own books and Mrs. Griffiths herself was also made aware of it. From that time on, the account was as much under her control as under his. He could do no more with it than she could. Invested with equal power and authority over it as she was, the gift was complete. It is difficult to see what more could have been done to make it so. A formal assignment of the account would have been no more effective; in fact, not so much so, because by the rules of the bank it is the pass book that largely controls the relation of the bank to the account of the depositor. By rule 4 printed on the cover of the book it is declared that:

“ The pass book shall be the voucher of the depositor and the possession of the pass book shall be sufficient authority to the bank to warrant any payment made and entered in it, and the bank shall not be liable or called upon to make any payment without the presenting of the pass book at its counter that the proper entry may be made in it.”

In case of the transfer of the account to a third party it might be necessary under this rule to turn over the pass book to him in order to make the gift complete. But in the case of a joint deposit, both parties cannot have the book at the same time, and possession by either must therefore be regarded as upon their joint account. This is particularly true as between husband and wife where there is a natural intermingling and confusion of possession.

This is not like Walsh's appeal, 112 Pa. 177, nor other similar cases, where the gift rested in an unexecuted in-

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tention merely. It is no doubt of the essence of a gift that it be executed; the truth is, execution is the whole of it. But the evidence here is sufficient to show this.

Neither do we regard the declaration of the daughter Lizzie as qualifying the gift. Assuming for the sake of argument that the mind of the decedent may have gone no further in the change of the account than the resulting convenience of it, what he actually did goes much further, and the legal effect of the change is not to be controlled by his doubtful intention weighed against his positive acts.

Moreover it is shown that since the death of Mr. Griffiths the bank has recognized the account as belonging to his wife and not only allowed her to draw upon it, but has transferred the whole of it to her credit. Assuming as we must that this was done on the strength of the change authorized by the decedent in his lifetime, of what avail would it be for the executors to now sue the bank and attempt to collect the deposit as the property of the estate? If they would fail in such a suit, as we think they undoubtedly must, they cannot be surcharged with what they could not collect if they tried.

### A AND B; EITHER TO DRAW.

Flanagan v. Nash, (1898), 185 Pa. St. 41., 39 Atl. Rep. 818.

*A, owner of a sum of money, went with B to the bank, and deposited same in the joint names of "A and B; either to draw." The deposit book also has stamped upon it "either to draw, and in case of death of either, the survivor to have full power to draw as if the deposit had been duly transferred to the survivor."*

*On A's death, B drew out the balance.*

*Held: B must refund to A's estate. A never parted with title during her lifetime, having the right to draw out the whole to the time of her death, hence there was no delivery to*

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*B, and no valid gift. The statement that "either might draw" or "the survivor might draw" conferred a mere right upon B to draw the money; but in the absence of words showing that if he drew it, he could keep it as his own, no title by gift could pass to B.*

On April 14, 1892, Bridget Gallagher, owner of a sum of money which she formerly had on deposit in her own name in the Philadelphia Saving Fund, went to the Beneficial Savings Fund Society of Philadelphia, accompanied by James Nash, and deposited the money in the joint names of herself and Nash. On the margin opposite the signatures the words "either to draw" were entered by the treasurer of the association. A book was also handed her which had the following words stamped upon it:

"Either party to draw, and in case of the death of either of them, the survivor shall have full power to withdraw the deposit as if the same had been duly transferred to such survivor."

There was no evidence to show that the entry appearing on the book was made in pursuance of any directions given by Bridget Gallagher. On April 12, 1893, Bridget withdrew \$58.50 by individual draft, she then having possession of the deposit book and presenting it at the bank. She died November 11, 1893, and James Nash drew out the balance of the account on November 16, 1893.

Upon demand made by the administrator of Bridget, Nash claimed that this money had been given by the decedent. This action is by the administrator of Bridget against Nash to recover the amount of the deposit.

The question is whether the defendant had any title to the money by way of gift. The difficulty in the way of the defendant's contention in this regard is that the decedent never parted with her title in her lifetime, and hence there was no delivery of the subject of the alleged gift. She had the right to draw out the whole of the

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money up to the moment of her death and for that reason she still held her title to the money. It never passed away from her while she lived, and therefore there was no delivery. There is no difference in this respect between gifts *inter vivos* and gifts *causa mortis*. Actual delivery of the subject of the gift is just as necessary in the one case as in the other. The only material difference between the two is that there is a right of reclamation in the latter which does not exist in the former.

The language of the court in Walsh's Appeal, 122 Pa. 177, is absolutely destructive of any claim of title by way of gift on the part of defendant.

Moreover, the statement in the bank books that either might draw, or the survivor might draw, does not at all establish a title as owner in the defendant. It is a mere right to draw the money that is conferred. There is nothing to show that if the defendant drew the money he could keep it as his own, and without such words no title by way of gift could pass.

### A AND B.

Parry's Estate, (1898), 188 Pa. St. 33, 41 Atl. Rep. 448.

*A purchased letters of credit, for foreign travel, payable to "A and B." B was A's wife. A died abroad, and B drew the balance on the letters.*

*Held: The letters created an estate, as between husband and wife, by entireties, and such an estate goes to the survivor. Drafts, certificates of deposit, or promissory notes, payable to husband and wife jointly, would have the same effect. The letters were not an absolute gift to the wife of the whole amount, but an estate in personalty, by entireties, to which she was entitled, as survivor, as against the executors of the husband's estate.*

On October 14, 1895, with a view to foreign travel, accompanied by his wife, William A. Parry purchased from Drexel & Co. and the Tradesmens' National Bank

## BANK DEPOSITS

of Philadelphia, two letters of credit each in the sum of \$10,000. The letters were in the same words, of which this is a copy:

"We hereby authorize the bearers, W. A. Parry and Minnie H. Parry, his wife, to value at sight upon Credit Lyonnaise, London, to an amount not exceeding £2,000, or at their option, upon Credit Lyonnaise, Paris, to the extent of 50,000 francs."

The credits were to extend to December 31, 1896. The husband and wife had been on their travels about four months when he died at Darjeeling, India, on February 8, 1896. At his death there remained a balance unexpended on the letters of credit of \$12,825.34. This was drawn by the widow before she returned to her home in Philadelphia.

Before he left home, on March 29, 1895, the husband executed a will whereby he bequeathed to his wife absolutely, \$20,000, and the income of nearly all the remainder of his estate, which was large, for life, and appointed her and Joseph Hopkinson, executors of his will. By their first account filed there was a balance of over \$120,000 for distribution.

At the audit, the widow's co-executor claimed she should be charged with the balance \$12,825.34 unexpended on the letters of credit at the death of her husband. The auditing judge sustained the claim. On the hearing before the court in banc, the court was equally divided, one for affirming, one for reversing, so the decree was affirmed. On appeal to the Supreme Court of Pennsylvania, the decree is reversed, and the widow is held entitled to the balance shown by the letters of credit.

Held: The credit was purchased by the husband's money. The wife paid none. The learned auditing judge was of opinion that the letters were issued to them jointly, merely as a matter of convenience; that as they represented the husband's money and there was no evidence of

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a gift or assignment by him to her, the unexpended balance should be charged against her.

We are clear the writings created an estate, as between husband and wife, by entireties, and such an estate at common law goes to the survivor. This estate may be created in a chattel as well as in realty, in a chose in action and in one in possession. Freeman on Cotenancy and Partition, Section 63 and 68. And as to choses in action, it is not abolished by the legislation affecting joint tenancy; for an estate that as to unmarried persons would be a joint tenancy, as to husband and wife is a tenancy by entireties. Therefore neither the act of March 31, 1812, that of April 11, 1848 nor that of June 3, 1887 applies.

These letters of credit on their face have nothing to distinguish them, in their legal consequences, from a draft drawn in favor of husband and wife, as payees, by the American bankers on the foreign ones, or from a certificate of deposit or promissory note to them jointly; all of which have been held to constitute an estate by entireties. It was not an absolute gift to the wife of the whole amount, nor intended so to be; it was an estate in personalty, the value of which to her depended upon two contingencies:

- (1) On her survivorship during the life of the letters;
- (2) on how much was still payable at his death. Both contingencies happened and she survived as to so much of the estate as had not been spent.

The fact that they were going abroad and that this was a convenient method of providing money for their expenses does not rebut, or even cast doubt on, the intention expressed in the writings. The husband procured to be framed and delivered an instrument which effects certain legal consequences on the happening of certain contingencies. He knew that by means of it, they could readily obtain money in foreign countries; that if both survived to return home, he could receive from the



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bankers who issued the letters, the estate being personalty, any balance not expended; that if he died abroad, the surviving wife took all that was left. There is not a spark of evidence indicating any other intention than that which legally arises on the face of the paper. In fact he may have, very reasonably, intended that if he died abroad among strangers, his widow should immediately be possessed of funds sufficient for her necessities and comfort, independent of any provision made for her in his will.

Appellees argue that, by such construction, if a letter of credit was issued for an indefinite amount, it would enable the widow to sweep the entire estate. We think it highly improbable that any banker would issue a letter of credit for an indefinite amount which would enable a wife to sweep her husband's entire estate and, perhaps, the banker's too; but if such a letter were issued at the request of the husband, the presumption, would be quite strong that he intended his wife should have his entire personal estate in case of his death. However any improbability as to the contention which might possibly be raised by such an extreme case is without weight here, for the husband took the letters for a limited amount, probably not one-twentieth of his large estate.

The court below erred in charging the widow with the sum of \$12,825.34, balance unpaid on the letters of credit at her husband's death.

## A IN TRUST FOR B.

*Rambo v. Pile* (1908), 220 Pa. 235, 69 Atl. Rep. 807.

A real estate dealer deposited money in his name as "Trustee for E. S. Githens." He retained the pass book and continued to make deposits and draw checks against the fund. In fact it constituted his regular business account. After the depositor's wife died he married the beneficiary of the trust account, and later she died. After

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the depositor died a controversy arose as to whether the deposit belonged to his estate or to the estate of the beneficiary. It was held that it belonged to the depositor's estate. All the surrounding circumstances tended to show that the deposit was made with the intention on the part of the depositor of retaining control and ownership of the deposit.

### A IN TRUST FOR B.

*Merigan v. McGonigle* (1903), 205, Pa. 321, 54 Atl. Rep. 994.

*A failure to notify the beneficiary of a trust deposit during the lifetime of the depositor will not defeat the trust.*

A rule of the Philadelphia Saving Fund Society limited the amount of deposits by any one person to \$300 per annum. In 1889 Mary Fitzgerald, a widow opened an account in her own name by depositing \$300. In the same year she deposited \$300 in her name "in trust for Mary Agnes Fitzgerald," her niece. Each year, for several years thereafter, she deposited a like amount in each account. She always retained possession of the pass book for the trust account and the niece did not learn of the existence of the account until after her death. During the time the deposits were being made the depositor had stated that "she had taken out a book" in her niece's name and that the money belonged to the niece and was deposited for her. It was held that a valid trust was created. It was argued that the object of the depositor was to deposit beyond the amount permitted to any one person and not to create a trust. This evidence, the court said, "was little more than a scintilla, and could not prevail against the admitted facts showing a contrary purpose."

### A, ATTORNEY FOR B.

*Pennsylvania Title & Trust Company v. Meyer*, (1902), 201 Pa. 299, 50 Atl. Rep. 998.

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*Where a person opens an account as attorney for another, the bank is protected in paying the attorney's checks.*

Frank J. Fertig opened an account in a trust company in his name as "attorney for Anna Baumann." Fertig checked the money out and used it. After the death of Mrs. Baumann, her administrator brought suit against the bank. It was held that, Fertig being the depositor, the bank was bound to honor his checks and was not liable in the absence of notice of the intended misappropriation.

## RHODE ISLAND.

### A, TRUSTEE FOR B.

Ray v. Simmons, Admr. (1875), 11 R. I., 266.

*A deposited money in the name of "A, trustee for B." B was A's stepdaughter. A handed B the book, who thanked him for the present. A regained possession of the book and made subsequent deposits: he made one withdrawal of interest but afterwards deposited more than he withdrew. Upon A's death, B sued A's administrator for the deposit.*

*Held: A trust was completely constituted in B's favor entitling her to the money.*

On April 6, 1868, Levi Bosworth deposited \$484 in the Fall River Savings Bank in an account:

"Levi Bosworth, trustee for Marianna Ray, Prov."

The account was credited with subsequent deposits and with divers dividends and there was only one withdrawal of a dividend of \$25.66 which was paid to Bosworth, October 12, 1870. Marianna Ray was a daughter of Mrs. Bosworth, wife of Levi Bosworth, by a former husband. Levi Bosworth had no children and treated Marianna as his daughter. When Levi Bosworth made the deposit he brought the book home and threw it in Marianna's lap. She opened and read it, and said she was much obliged for the present. Bosworth said nothing in reply. Mrs. Bosworth then put the book in a box

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where she kept her own bank book, a bank book of her daughter, and bank books belonging to her husband.

He carried the book to Fall River three times to have the interest entered and gave it to Marianna on his return. He was a man of few words, and would do things without explanation. When he made the last deposit of \$70, and gave Marianna notice of it Mrs. Bowsorth said to him "I don't know about you making such presents." He replied "I shouldn't think you need trouble yourself about it; if anything happens to her you will hold it."

Levi Bosworth died September 15, 1872. Marianna Ray, claiming to be entitled to the deposit as money held in trust for her by Levi Bosworth, brought this suit against Josiah Simmons, administrator on Bosworth's estate. The administrator contended that Bosworth made the deposit in his name as trustee for his own convenience and because he had another deposit in his own name to as large an amount as the bank would receive on any one account; and therefore to induce the bank to receive the further deposit, he put in his name as trustee, as is a very common practice in such cases, always retaining the book under his own control. In support of his contention the administrator testified that Bosworth told him when he was building his house that he had money deposited in the Fall River Savings Bank in his own name to as large an amount as he could deposit in his own name and in another person's name, but did not say in whose name.

The administrator contended that plaintiff was not entitled to relief because there was no effectual trust, inasmuch as Bosworth, by retaining the book, always kept and intended to keep control over the deposit for his own use and did in fact so control it by receiving the dividend which was paid to him October 12, 1870.

Held: We think the trust was completely constituted. Levi Bosworth deposited the money in the bank to him-

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self as trustee. The bank receiving it credited it to him as trustee, and from time to time credited to him as trustee the dividends accruing thereon. It gave him a bank book in which these credits were entered. Bosworth moreover communicated to the plaintiff the fact that he had made the deposit to himself as her trustee by letting her have the book. It is urged that the book was returned to him by her and retained by him. But the book was given by the bank to him as trustee, and as trustee he would properly retain it. All was done which the plaintiff could ask, unless she desired to have the money paid or transferred to her, which would be not constituting the trust but carrying it into effect and discharging it. Bosworth might have declared himself more explicitly; but supposing his object was to create a trust and make himself the trustee, we can think of no act necessary to effect his purpose which he has left undone.

When the trust is voluntary, courts of equity do not enforce it so long as it remains inchoate or incomplete; but when once the trust has been constituted, they do not refuse relief because it is voluntary. A person need use no particular form of words to create a trust, or to make himself a trustee. It is enough if, having the property, he conveys it to another in trust, or, the property being personal, if he unequivocally declares either orally, or in writing, that he holds it in *presenti in trust*, or as trustee for another.

Concerning the declaration made by Mr. Bosworth to the administrator when he was building his house, it was casually made and may have been misunderstood. But supposing it was correctly understood, we do not think we can allow it to alter our decision. The trust, except in so far as it was increased by subsequent deposits, was in our opinion created before the declaration was made; and no such declaration made after the creation of the trust could have any legitimate effect on it. The

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same is true in regard to the withdrawal of the dividend. It may be remarked also that the dividend withdrawn was more than replaced by the \$70 afterwards deposited.

We do not think the cases of *Brabrook v. Boston Five Cents Savings Bank*, 104 Mass. 228, and *Clark v. Clark*, 108 Mass. 522 are precedents which should govern the decision of the case at bar.

Decree ordering the respondent to pay to the complainant the whole deposit, with interest, in the *Fal River Savings Bank* standing in the name of *Levi Bosworth*, trustee.

### B; A TRUSTEE.

*Petition of Joanna E. Atkinson*, (1899), 16 R. I. 413, 16 Atl. Rep. 712.

*A made a deposit in the name of "B; A trustee." A told B the deposit had been made for him, and the money would be B's at A's death. A retained the deposit book until he died, and drew no part of the principal or interest.*

*Held: A trust was completely constituted by A in favor of B, which A had no power to revoke. B was therefore entitled to the deposit as against A's estate.*

*William Atkinson* died intestate February 18, 1888, leaving a widow and six children, three sons and three daughters, the widow being the administratrix of his estate. He left personal estate to the amount of \$17,000 in excess of all his debts and liabilities and of the deposits hereinafter mentioned.

On January 15, 1885 he deposited \$2,000 of his own money in the *Mechanics Savings Bank*, opening an account as follows:

"*Willie J. Atkinson, William Atkinson, trustee.*"

He gave the bank book in which the account was thus entered to *Willie J.*, which book the latter retained until October 19, 1886 when he (*William Atkinson*) withdrew the deposit and interest and invested the same in his individual name.

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Likewise January 15, 1885 William Atkinson deposited in the same manner \$2,000 in the names respectively of Samuel M. and Robert W. Atkinson and \$1,000 in the name of Anna L. Atkinson. Said Willie J., Samuel M. and Robert W. were the sons of William Atkinson. Anna L. was one of his daughters and had served him as confidential clerk and bookkeeper for about fourteen years.

He drew no part of the principal or interest of either of the last three accounts, but retained the deposit books until he died. He told each of the four, in his lifetime, that he had made the deposits for them and that the money would be theirs at his death. He neither made nor caused to be made any charge or memoranda of the deposits other than as above stated, and never delivered to either of his children the pass-book of deposits standing in his or her name. He made no deposit or gift to his other two children except small and ordinary presents.

Held: We think it is plain that the intention of the depositor was not to give the deposits directly to the children severally named in them, but to give them through the medium of as many trusts wherein he himself should be a trustee for them; and the deposits being deposits of money or personalty, we know of no technical rule which prevents our construing them according to their essential character as determined by the intention.

Deposits in this form appear not to be uncommon in this State and have been treated by this court in a previous case as deposits in trust.

It follows that the aforesaid Samuel, Robert and Anna are entitled to have the money deposited for them and hold it as their own without accounting for it in the settlement. The said Willie J. is also entitled to the money deposited for him, with the interest, which has accrued thereon, both under the original and later form of deposit; for the deposit having been kept entire we think it fair to

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suppose that the purpose was simply to transfer it from one bank to the other without violating the trust.

The trust having once been completely constituted, the trustee had no power to revoke it. The declaration of the trustee to the beneficiary, as above stated, shows that he understood it to be completely constituted and is inconsistent with the suggestion that the deposits were made in the form of trusts to evade any rule of the bank. The case stated does not show that there was any rule of the bank limiting the deposits.

Decree in accordance with the above opinion.

### A OR B.

Providence Institution for Savings v. Mary F. Carpenter, (1893), 18 R. I. 287, 27 Atl. Rep. 337.

*A deposited money in a savings bank in the name of "A or B," the understanding being that the money was to remain the property of A, during her lifetime, subject to her control, and at A's death, the money was to be B's, to apply to certain religious and charitable uses. Upon A's death,*

*Held: The money belongs to A's estate and not to B. There was no gift inter vivos, there being no transfer of title by A to B; nor was there a completely executed trust, as the title remained in A and she could have done what she liked with the money during her life, without any breach of trust.*

Margaret Hart, deceased, had a deposit in the Providence Institution for Savings in her own name which she transferred, May 12, 1892, to a new account in the names of

"Margaret Hart or Mary F. Carpenter."

The understanding was that the money was to remain the property of Margaret Hart during her life, subject to her own control, and at her death to be the property of Miss Carpenter for the purpose of applying it to religious and charitable uses.



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The bank brought this bill of interpleader, to determine whether Mary F. Carpenter or the administrator of Margaret Hart was entitled to the deposit.

Held: The question is whether, under the facts, the fund belongs to the administrator of the estate of Margaret Hart or to Mary F. Carpenter. On the part of the latter it is claimed that the transaction amounted to a gift *inter vivos*, or at least to a valid declaration of trust in her favor.

The cases all agree that to transfer title there must be a completely executed gift or trust. They differ in regard to what constitutes such an execution.

The uniform rule, as recognized in *Ray v. Simmons*, 11 R. I. 266, is that the circumstances must show that the donor holds the fund *in presenti* as trustee for another. This element is wholly lacking in the present case. Not only was it understood by the parties that the money was to belong to Margaret Hart while she lived, but under the form of deposit she was enabled to withdraw the whole and to apply it to her own use, without a breach of any trust express or implied.

The arrangement was of a purely testamentary character. We are of opinion that the evidence in this case does not show a executed trust, but only a testamentary disposition; that it does not show a gift *inter vivos* and that there was no transfer of the title from Margaret Hart to Mary F. Carpenter. The fund in question, therefore, belongs to the administrator of Margaret Hart.

### A AND B; PAYABLE TO EITHER OR THE SURVIVOR.

*Woonsocket Institution for Savings v. Heffernan*, Admr., (1897), 20 R. I. 308, 38 Atl. Rep. 949.

*A deposited money in the name of "A and B; payable to either or the survivor," and left the book with a third party for safe-keeping. Shortly before her death, she notified B of*

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*the deposit and sent word to him to come and get the book and he could get the money at any time. A died before B got the book.*

*Held: The fund belongs to A's estate. B did not receive the book during A's life, and A's control over, and title to, the deposit continued to her decease. There was no completed gift.*

On May 16, 1885, Catharine Maroney made a deposit in the savings institution in the following form:

"Catharine Maroney and John Maloney; payable to either or the survivor."

Shortly after that date she left the deposit book with the Rev. George Maloney for safe keeping. On January 1, 1887, she sent word to John Maloney by his wife to come and get the book and he could have the money at any time. This was the first knowledge John Maloney had of the deposit. Catherine Maroney at the time of sending word to John Maloney, was ill, with what proved to be a fatal illness, though it does not appear that she was aware at that time that her illness was to be fatal. She died a few weeks subsequently and before John Maloney had gone to get the book.

The bank brought a bill of interpleader against John Maloney and the administrator of Catherine, to determine the title to the deposit.

*Held: The question is whether in this state of facts John Maloney is entitled to the fund. We think not. Though the deposit was made in the joint names of Catherine and John, she retained control over the deposit book, without which the money could not be drawn; and though she sent word for him to come and get the book, he did not do so, and the control over the deposit, therefore, remains with her until her decease. This being so, the gift of the deposit was not complete and it remained her property. A decree must therefore be entered for the payment of the fund to the administrator.*

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### A IN TRUST FOR B.

People's Savings Bank v. Webb, (1899), 21 R. I. 218, 42 Atl. Rep. 874.

*A mere deposit by A in trust for B does not create an irrevocable trust in the absence of evidence of intent except in the case of A's death.*

James H. Webb deposited money in a savings bank in his own name in trust for his son, Fred E. Webb. The only evidence tending to show intent to create a trust was that fact that James Webb told his wife about the deposit. It was held that this was insufficient to establish an irrevocable trust and that the deposit belonged to James Webb.

In the opinion it was said: "There is a unanimous agreement (in the decisions) that the creation of a trust, as to a deposit, is a question of intention, and so a question of fact. None of them hold that a trust is conclusively constituted by the deposit itself. Some go so far as to hold that a deposit in the name of another, without any mention of a trust, is still open to inquiry. The strictest rule in favor of the trust seems to be this; that the intention to create one may be presumed when the depositor dies, leaving the matter unexplained and the apparent intention undisputed. It is certainly clear that the depositor is not conclusively bound by the mere form of a deposit as trustee for another. The proposition rests upon the good reason that one who is dealing with his own property, either ignorantly or for convenience, or pursuant to a purpose, not fully determined or executed, should not be held to have dispossessed himself against his will."

### VERMONT.

MONEY PAYABLE TO A IF CALLED FOR BEFORE DECEASE;  
IF NOT, TO B.

Blanchard v. Sheldon, (1871), 43 Vt. 512.

## DECISIONS

*A, intending to invest \$300, so that if she needed any part of it during her lifetime she could collect it, and if she died without collecting it the money should be B's, invested the money in an obligation of S, which promised to pay the amount and interest to A if she called for it before her decease, if not, to pay it to B. A retained this obligation until her decease, and never called for any of the money.*

*Held: There was a valid gift inter vivos to B, consummated by delivery to S. The gift is none the less valid because subject to the condition that A might collect some part or the whole of it during her life. The time for A's election having expired with her decease, the gift was thereby freed from all condition of defeasance, and B's right to immediate possession thereupon became absolute.*

Aurilla Ballou, having \$300 in money, expressed a wish so to invest it that if she should need any part of it during her lifetime, she could collect it, but if she should die without collecting it, the money and interest should go to Daniel L. Blanchard. Her son, Henry L. Sheldon, proposed to take the money and furnish security that her desire should be carried out. Thereupon Mrs. Ballou delivered to him the \$300, and took from him the following writing, which Miranda Hines signed as surety:

"For value received, I promise to pay Aurilla Ballou, three hundred dollars, with annual interest, if she called for it before she deceased, if not to be paid to Daniel M. Blanchard by her order. January 12, 1867.

Henry L. Sheldon,  
Miranda Hines."

Mrs. Ballou kept this instrument with her other papers for a while, but before her decease sent it with other papers in a box to James Sheldon, the executor of her will, who retained the custody until after her decease.

After Mrs. Ballou died, Daniel M. Blanchard demanded the instrument of James Sheldon, but he refused to give it

## BANK DEPOSITS

up and collected the money due on it as part of her estate.

In this action by Daniel M. Blanchard against James Sheldon,

Held: Plaintiff did not acquire title to this \$300 as a *donatio causa mortis* for at the time this arrangement was entered into Mrs. Ballou was in ordinary health, but the transaction can be upheld as a gift *inter vivos*.

Mrs. Ballou clearly intended to give the money to Blanchard, reserving to herself a contingent right to collect it if she should need it for her support. The writing, though somewhat inartificially drawn, evidenced this intention. We think the clear purport of that instrument is that the makers promised to pay Blanchard the \$300, with annual interest by order of Aurilla Ballou, with the right on her part to call for and collect it, if she elected so to do in her lifetime; and that she delivered the \$300 to Henry L. Sheldon, as the money of Blanchard and for Blanchard, and not for herself, further than if she should be in need of it and elected so to do, she could collect it for herself. This delivery vested the property of the \$300 in Blanchard subject to be defeated only by Mrs. Ballou's taking some further action in regard to it. So long as she refrained from calling for it, Henry L. Sheldon continued to hold the \$300 for Blanchard.

A gift *inter vivos* may be delivered to a third person to hold for the donee. To constitute a valid gift *inter vivos* there must be both a delivery of the gift by the donor to the donee, or to some one for the donee, and an acceptance by the donee. In this case there was a delivery of \$300 by the donor to Henry L. Sheldon for Blanchard. The law presumes the acceptance of a gift by the donee when it is unaccompanied by any condition to be performed by the donee. Nor do we see on principle how a gift, if absolute, and delivered to a third person for the donee, but not to be delivered to the donee until the happening of

## DECISIONS

some event, or being liable to be wholly defeated if a certain event occurs, is any the less a valid gift. The only condition of defeasance in the present case was a possible election of the donor to collect some part or the whole of the money delivered. The time for exercising this election expires with the life of the donor, and the gift thereby was freed from all condition of defeasance, and the right of the donee to immediate possession of the \$300 and interest became absolute. Judgment for plaintiff.

### B; PAYABLE TO A.

Pope v. Burlington Sav. Bank and Marion Cushing, Claimant, (1884), 56 Vt. 584.

*A deposited money in a savings bank in the name of B, but with the entry added "payable to A." A always retained the deposit book and controlled the deposit, at one time pledging same as security for a loan, and afterwards withdrawing part of the deposit. B had no knowledge of the deposit. After A's death,*

*Held: There was not a valid gift to B, there being no delivery and A always retaining control of the deposit. Nor could the transaction be sustained as a trust, the bank being trustee for B, nor did A hold the deposit as trustee for B.*

On January 15, 1880, Sidney Barlow deposited in the Burlington Savings Bank \$800 of his own money and took therefor deposit book No. 10,973, which he always kept and controlled. By the custom of the bank, to prevent frauds in the case of loss of deposit books, no name of a depositor appeared on their deposit books, but merely a number. On a register kept in the bank these numbers were inscribed and against each number were separate columns for the names, residence, occupation, age and date of birth of the depositor, together with such remarks or condition as to the deposit as were directed to be entered. In this particular case the entries on this

## BANK DEPOSITS

register were as follows: signature, "Marion Cushing;" remarks, "payable to S. Barlow."

The column headed "signature," did not contain the signature of any person but merely a name written by the officers of the bank, which was that of the person in whose name the deposit was directed to be made.

The pass book was so issued and this entry so made in accordance with the express direction of Mr. Barlow. Barlow made or executed no writing in respect to this deposit at any time or on said book, or the books of the bank; nor did he make any entry anywhere in respect to this deposit, except that some time before his death he wrote the initials "M. C." in pencil upon the cover of the deposit book.

In March and June following the making of the deposit, Barlow borrowed sums of money from the bank giving his individual notes therefor and pledging this pass book as security; and when the notes became due he withdrew from this deposit to apply in payment of the notes a sum which left the balance of the deposit less than \$400.

On August 20, 1880, Mr. Barlow, being in ordinary health, verbally directed the treasurer to add to the entry "payable to S. Barlow," so as to make it read "payable to S. Barlow during his life, and after his death to Marion Cushing," which was done.

Nothing else was ever said or written by Barlow to any one in respect to this deposit or his intention in regard to it. The by-law printed on the pass book provided that no deposit can be withdrawn without the production of this book. The treasurer understood this deposit was under Barlow's control and regarded him as the depositor and that it was his money; and the bank had no communication with Miss Cushing or any one else in respect to it. Nothing else occurred in regard to it previous to his death. He left a will, made before this deposit, in which was this provision: "I hereby confirm all gifts I

## DECISIONS

have made or shall make to any of my children." Marion Cushing was a grandchild living in California.

In an action brought against the bank by the executor of Barlow, in which Marion Cushing was cited as claimant,

Held: 1. The deposit by Barlow in the name of Marion Cushing cannot be sustained as a gift *inter vivos*. It was his money, and, although deposited in her name, it was made payable solely to himself during his life, he retaining the pass book and having absolute control of the deposit, and she being neither a party to, nor having any knowledge of the transaction. Whether the transaction would have constituted a perfected gift *inter vivos*, if Barlow had delivered the deposit book to the claimant, or to some other person in trust, is not the question in the case at bar. Here there was no delivery whatever. If the deposit had been made in such a way and with such an understanding with the bank as to place it beyond recall or control of Barlow, then the transaction might, under the authority of *Howard v. Savings Bank*, 40 Vt. 597, be upheld as a completed gift notwithstanding Barlow kept the deposit book, but the facts of this case do not bring it within the theory upon which that case was decided.

2. Nor can this transaction be sustained as a trust, the bank being a trustee. The primary relation of a depositor in a savings bank to the corporation is that of creditor and not that of a beneficiary of a trust and the deposit when made becomes the property of the corporation. The statute (S. 3575 R. L.) provides an easy method of making a deposit a trust for another, which was in force when the deposit in question was made. If a deposit in the depositor's name does not create a trust relation no more would that relation be created by depositing in another person's name, or making it payable to another's order. The claimant, therefore, cannot stand on the ground that the bank became a trustee



## BANK DEPOSITS

when the deposit was made without any declaration of trust.

3. Nor did the transaction create a trust between the claimant and Barlow, so that he held the pass book as trustee for her. What Barlow did, did not constitute a declaration of trust. The money deposited was his. The pass book was the evidence of the deposit and took the place of the money in his hands. No species of property can be more easily transferred or delivered. Nothing was said indicating an intention to hold the book in trust other than the direction to make said entry on the bank register. This was insufficient.

### A IN TRUST FOR B.

Connecticut River Savings Bank v. Albee, (1892), 64 Vt. 571, 25 Atl. Rep. 487.

*The fact that the depositor has placed the maximum amount not subject to tax in his own name in a bank is not inconsistent with the creation of a trust in the same bank.*

Samuel Albee, having over \$3,000 on deposit in the Connecticut River Savings Bank, was informed by the treasurer of the bank that all sums in excess of \$2,000 were taxable against him and that he might escape the tax by transferring a portion of the deposit to the name of some other person. Later the depositor went to the bank, drew \$1,600 and deposited it in the name of "Charles P. Albee, of Rockingham, Vt., in account with Conn. River Savings Bank." Inside the pass book was this entry: "Conn. River Savings Bank in account with Charles P. Albee, (Samuel Albee, Trustee) December 12, 1878. Deposit, \$1.600." Charles P. Albee was the son of the depositor. The depositor retained the book until his death. It was held that there was a valid trust in favor of Charles. The fact that the depositor had stated that he had made the transfer to avoid taxation was held not to negate the idea that he intended also to create

## DECISIONS

a trust, for the benefit of his son, but, on the contrary, was perfectly consistent with that purpose. Nor was the retention of the book inconsistent with such purpose. The depositor, in such a case must be deemed to have retained the book as trustee.

## **APPENDIX B.**

### **STATUTES.**

**Complete text of the statutes, which have been enacted  
in the different states, affecting trust,  
joint and alternate deposits.**

#### **CALIFORNIA.**

**Trust Deposits.** When any deposit with a bank shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest, if any, thereon, may be paid to the person for whom the deposit was made. (Sec. 16, Banking Law, 1909).

**Joint and Alternate Deposits.** When a deposit with a bank shall be made by any person in the names of such depositor and another person or persons, and in form to be paid to either or the survivor or survivors of them, such deposit thereupon, and any additions thereto made by either of such persons upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the lifetime of all or any or to the survivor or survivors after the death of one or more of them, and such payments and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to said

## STATUTES

bank for all payments made on account of such deposit." (Sec. 16, Banking Law, 1909).

Section 2 of this act defines "bank" as follows: "Every person, firm, company, copartnership or corporation which conducts the business of receiving money on deposit."

## CONNECTICUT.

**Trust Deposits.** When a deposit is made in any savings bank by one person in trust for another, the name and residence of the *cestui que trust* and the nature of the trust shall be disclosed, and the deposit shall be credited to the depositor as trustee for such person; and in case it be a trust created by deed, will, or judicial appointment, a certificate to that effect shall be filed at the time of the deposit. If no notice of the existence and terms of such a trust has been given in writing to the bank, in the event of the death of the trustee, the deposit, with the interest thereon, may be paid to the *cestui que trust*. (Gen. Stat., Sec. 3436, L. 1899, Ch. 122.)

**Joint and Alternate Deposits.** When a deposit has been or shall be made in any savings bank in the name of two persons and payable to either or to the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, and the receipt of the person so paid shall be a valid and sufficient release and discharge on account of the payment so made. (L. 1907, Chap. 61.)

## IOWA.

**Joint and Alternate Deposits.** When a deposit shall hereafter be made in any bank or trust company in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof,

## BANK DEPOSITS

or interest or dividend thereon, may be paid to either of said persons whether the other be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank, banker, or trust company for any payments so made. (L. 1911, Chap. 84.)

## LOUISIANA.

**Joint and Alternate Deposits.** When a deposit has been made, or shall hereafter be made, in any bank, savings bank or trust company transacting business within this State, under the names of two or more persons, payable to either or payable to either of the survivors, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other or others be living or not, and the receipt or acquittance of the person so paid shall be a valid, sufficient and complete release and discharge of the bank, savings bank, or trust company for any payment so made. When a safety deposit vault shall have been hired, or shall hereafter be hired from any bank, savings bank or trust company, transacting business in this State, under the names of two or more persons, with the right of access being given to either, or with access to either of the survivor or survivors of said persons, such survivor or survivors, whether the other or others be living or not, shall have the right of access to such deposit vault, and may remove therefrom the contents of said box; provided, that in all cases where such removal shall have been made, the said bank, savings bank or trust company, shall be exempt from any liability for permitting the said survivor or survivors access thereto. (L. 1908, p. 283.)

## MAINE.

**Trust Deposits.** Whenever a deposit is made in trust, the name and residence of the person for whom it is made,

## STATUTES

or the purpose for which the trust is created, shall be disclosed in writing to the bank, and the deposit shall be credited to the depositor as trustee for such person or purpose; and if no other notice of the existence and terms of a trust has been given in writing to the corporation, the deposit, with the interest thereon, may, in the event of the death of the trustee, be paid to the person for whom such deposit was made, or to his legal representative, or to some trustee appointed by the court for that purpose. (Banking Law, Sec. 19.)

**Joint and Alternate Deposits.** When money is deposited in the names of two or more persons, payable to either, the whole or any part thereof, may be paid to either of such persons with or without the consent of the other, before or after the death of the other. (L. 1907, Ch. 69.) When a deposit has been made or shall hereafter be made in any bank or trust company transacting business in this state, in the name of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or interest or dividends thereon, may be paid to either of said persons whether the other be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to such bank or trust company for any payment so made. (L. 1907, Ch. 119.)

## MARYLAND.

**Trust Deposits.** Whenever any deposit shall be made by any person in trust for any other, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the bank, savings institution, or trust company, in the event of the death of the trustee, the same or any part thereof and any interest due thereon, may be paid to the person for whom the said deposit was made. (L. 1910, Ch. 219, Sec. 71, p. 30.)

## BANK DEPOSITS

**Joint and Alternate Trust Deposits.** When a deposit has been made or shall hereafter be made in any bank, savings institution or trust company, in the names of two persons, payable to either, or payable to either or the survivor, such deposit or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. (L. 1910, Ch. 219, Sec. 72, p. 30.)

## MASSACHUSETTS.

**Trust Deposits.** Whenever any deposit shall be made in such corporation (savings bank or institution for savings) by any one in trust for another, the name and residence of the person for whom such deposit is made shall be disclosed, and the deposit shall be credited to the depositor as trustee for such person; and when no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the corporation, in the event of the death of the trustee, the deposit or any part thereof, together with the interest thereon, may be paid to the person for whom the said deposit was made, or his legal representative. (L. 1876, Ch. 203, Sec. 20.)

**Joint and Alternate Deposits.** When a deposit has been made, or shall hereafter be made, in any bank, savings bank or institution for savings in the names of two persons, payable to either, or payable to either or the survivor, such deposit or any part thereof, or interest or dividend thereon, if not then attached at law or in equity in a suit against either of said persons, may be paid to either of said persons, whether the other be living or not, and such payment shall discharge the bank,

## STATUTES

savings bank or institution for savings making such payment from its obligation, if any, to such other person or to his legal representatives for or on account of such deposit. For the purposes of this act the term "bank" shall include any person or association of persons carrying on the business of banking, whether incorporated or not. (L. 1911, Chap. 228.)

## MICHIGAN.

**Trust Deposits.** When any deposit of money shall be made in any bank or trust company by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was made, and the receipt or acquittance of such beneficiary to whom such payment is made shall be a valid and sufficient release and discharge to said depository for all payments so made; provided, that said deposit shall not exceed the sum of five hundred dollars. (L. 1909, No. 248, Sec. 2.)

**Joint and Alternate Deposits.** When a deposit shall be made in any bank or trust company by any person in the name of such depositor or any other person and in form to be paid to either or to the survivor of them, such deposits thereupon and any additions thereto, made by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both or to the survivor after the death of one of them, and such payment and the receipt or acquittance of the same to whom such



## BANK DEPOSITS

payment is made shall be a valid and sufficient release and discharge to said bank for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof. (L. 1909, No. 248, Sec. 3.)

## MINNESOTA.

**Trust Deposits.** Whenever any deposit shall be made (in any bank or savings bank) by any person in trust for another and no other written notice of the existence and terms of any valid and legal trust shall have been given to the bank, in case of the death of such trustee the same or any part thereof, and the dividends or interest thereon, may be paid to the person for whom the deposit was made. (L. 1907, Ch. 468, Sec. 6.)

**Joint and Alternate Deposits.** And whenever any deposit shall be made (in any bank or savings bank) by or in the names of two or more persons upon joint and several account, the same or any part thereof and the dividends or interest thereon may be paid to either of such persons or to a survivor of them or to a personal representative of such survivor. (L. 1907, Ch. 468, Sec. 6.)

## MISSOURI.

**Trust Deposits.** When any deposit shall be made in any bank, banking institution or trust company by any person in trust for another, and no other or further notice of the existence and terms of such trust shall have been given in writing to the bank, banking institution or trust company, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom such deposit was made.

## STATUTES

Whenever any deposit shall be made in any bank, banking institution or trust company by any person as trustee, or by any person in trust for another, and no other or further notice of the existence and terms of such trust shall have been given in writing to the bank, banking institution or trust company, the same may be paid upon the check or order of said trustee, bearing his signature and containing the same words in which said deposit was made. (L. 1909, p. 370.)

## MONTANA.

**Trust Deposits.** Whenever any deposit shall be made in any bank, savings bank, banking institution or trust company by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made. (L. 1909, Ch. 37.)

**Joint and Alternate Deposits.** When a deposit has been made, or shall hereafter be made, in any bank, savings bank, banking institution, or trust company, transacting business in this State, in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. (L. 1909, Ch. 110.)

## NEBRASKA.

**Joint and Alternate Deposits.** When a deposit in any bank in this state is made in the name of two or more

## BANK DEPOSITS

persons, deliverable or payable to either, or to their survivor or survivors, such deposit, or any part thereof, or increase thereof, may be delivered or paid to either of said persons or to the survivor or survivors in due course of business. (L. 1909, Ch. 9, p. 65.)

## NEW HAMPSHIRE.

**Joint and Alternate Deposits.** When a deposit has been made, or shall hereafter be made in any savings bank transacting business in this state in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend therein, may be paid to either of said persons, whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made; *provided, however*, that if one of the parties has deceased, and the bank officials have knowledge of the fact, payment shall not be made to the survivor until the state treasurer has certified that no taxes are due the state under the provisions of Chapter 40 of the Laws of 1905 and amendments thereto, on account of the interest of said decedent in said deposit or that all taxes due have been paid. (L. 1909, Ch. 92.)

## NEW JERSEY.

**Trust Deposits.** Whenever any deposit shall be made by any person in trust for another (in a savings bank), and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made, or to his legal representatives,

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*provided*, no minor shall withdraw any deposit in his name from any account in which the first deposit was actually made by any person other than such minor, without the consent in writing of the person actually making such deposit, or his legal representative, if any; and if none, without the written consent of the natural or legal guardian of such minor. (L. 1906, Ch. 195, Sec. 26.)

Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the trust company, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made, or to his or her legal representatives; *provided*, that the person for whom the deposit was made, if a minor, shall not draw the same during his or her minority without the consent of the legal representatives of said trustee. (Applicable to trust companies, only. L. 1903, Ch. 210.)

**Joint Deposits.** When a deposit has been or shall hereafter be made, in the name of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or interest or dividends thereon, may be paid to either of said persons whether the other be living or not, and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. (Applicable to savings banks. L. 1906, Ch. 195, Sec. 27.)

When a deposit has been made, or shall hereafter be made, in any bank or trust company transacting business in this State in the name of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not. (L. 1907, Ch. 40.)

## BANK DEPOSITS

### NEW YORK.

**Trust Deposits.** Whenever any deposit shall be made (in a savings bank) by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made. (Sec. 144 of the Banking Law.)

**Joint and Alternate Deposits.** When a deposit shall be made by any person in the names of such depositor and another person and in form to be paid to either or the survivor of them, such deposit thereupon and any additions thereto made by either of such persons upon the making thereof shall become the property of such persons as joint tenants, and the same together with all interest thereon shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both or to the survivor after the death of one of them; and such payment, and the receipt or acquittance of the one to whom such payment is made, shall be a valid and sufficient release and discharge to said bank for all payments made on account of such deposit prior to receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof. (Sec. 144 of the Banking Law.)

### NORTH CAROLINA.

**Trust Deposits.** Whenever any deposit shall be made in any bank, banking institution or trust company doing business in this State by any person in trust for any person who is a minor of the age of fifteen years, and upward, and no other or further notice of the existence and terms of a legal and valid trust shall have been given to the bank, in the event of the death of the trustee, the same, or any part

## STATUTES

thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made: *Provided*, the amount of said deposit is not in excess of fifty dollars. (L. 1909, Ch. 459.)

## OHIO.

**Joint and Alternate Deposits.** When a deposit has been made or shall hereafter be made, in any bank, savings bank, bank association or trust company transacting business in this state in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. (L. 1910, House Bill No. 211, p. 120.)

## OREGON.

**Joint and Alternate Deposits.** When a deposit has been made or shall hereafter be made in the name of two persons, payable to either, or payable to either or the survivor, such deposit or any part thereof, or interest or dividends thereon, may be paid to either of the said persons whether the other be living or not, and the receipt or acquittance of the person so paid shall be valid and sufficient release and discharge to the bank for any payment so made. This section shall apply to all banking institutions, including national banks, within this state. (L. 1907, Ch. 138, Sec. 19, p. 267.)

## PENNSYLVANIA.

**Trust Deposits.** Whenever any deposit shall be made by any person in trust for another, and no other or

## BANK DEPOSITS

further notice of the existence and terms of a legal and valid trust shall be given in writing to the bank, in the event of the death of the trustee the same, or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom such deposit was made. (L. 1899, p. 251.)

## RHODE ISLAND.

**Trust Deposits.** If a deposit is made with any bank, savings bank or trust company by one person in trust for another, the name and residence of the person for whom it is made shall be disclosed, and it shall be credited to the depositor as trustee for such person; and if no other notice of the existence and terms of a trust has been given in writing to the corporation, the deposit, with the interest thereon, may in case of the death of the trustee, be paid to the person for whom such deposit was made or to his legal representative. (L. 1908, Ch. 1590, Sec. 16.)

**Joint and Alternate Deposits.** When a deposit has been or shall be made in any bank, savings bank or trust company in the name of two persons and payable to either or to the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not, and the receipt of the person so paid shall be a valid and sufficient release and discharge on account of the payment so made. (L. 1908, Ch. 1590, Sec. 67.)

## SOUTH DAKOTA.

**Trust Deposits.** Whenever any deposit shall be made (in any bank) by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such

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bank, in the event of the death of the trustee, the same or any part thereof, and any interest due thereon, may be paid to the person for whom the said deposit was made. (L. 1909, Ch. 222, Art. 2, Sec. 44, p. 346.)

**Joint and Alternate Deposits.** When a deposit has been made, or shall hereafter be made, in any bank transacting business in this state in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person shall be valid and sufficient release and discharge to the bank for any payment so made. (L. 1911, Ch. 128, p. 159.)

## TEXAS.

**Trust Deposits.** Whenever any deposit shall be made (with any savings bank) by any persons in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made. (L. 1905, Ch. 10, Sec. 25, p. 499.)

## VERMONT.

**Trust Deposits.** When a deposit is made in a savings bank, savings institution or trust company by a person in trust for another, the name and residence of the person for whom the deposit is made shall be disclosed, and the deposit shall be credited to the depositor as trustee for such person; and when no other notice of the existence and terms of a legal trust is given in writing to the cor-



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poration, at the death of the trustee, the deposit, or any part thereof, with the dividends or interest thereon, may be paid to the person for whom the deposit was made. (Pub. Stat., Sec. 4638.)

## WASHINGTON.

**Joint and Alternate Deposits.** When a deposit has been made or shall hereafter be made in any bank or trust company transacting business in this state in the name of two persons, payable to either of such persons, such deposit or any part thereof, or interest or dividends thereon, may be paid to either of the said persons whether the other be living or not and the receipt or acquittance of the person so paid shall be valid and sufficient release and discharge to such bank or trust company for any payment so made: *Provided*, that this act shall not apply to deposits in excess of three hundred (\$300) dollars. (L. 1907, Ch. 80.)

## WEST VIRGINIA.

**Trust Deposits.** When a deposit is made in any such corporation (savings bank) by any one in trust for another, the name and residence of the person for whom it is made shall be disclosed, and it shall be credited to the depositor as trustee for such person; and if no other notice of the existence and terms of a trust has been given in writing to the corporation, in the event of the death of the trustee, the deposit, with the interest thereon, may be paid to the person for whom such deposit was made, or to his legal representatives. (Sec. 36, Savings Bank Law.)

## WISCONSIN.

**Trust Deposits.** Whenever any deposit shall be made (in any savings bank) by any person in trust for another,

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and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, in the event of the death of the trustee, the same or any part thereof, and the dividends or interest thereon, may be paid to the person for whom the said deposit was made. (1 S. & B. Ann St., Sec. 2020.)

**Joint and Alternate Deposits.** When a deposit not exceeding five hundred dollars has been made, or shall hereafter be made, in any bank transacting business in this State in the names of two persons payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. (L. 1911, Ch. 67.)

## WYOMING.

**Trust Deposits.** Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom said deposit was made, and in case such person is a minor, to the duly appointed, qualified and acting guardian thereof. (L. 1911, Chap. 34.)

**Joint and Alternate Deposits.** When a deposit has been made, or shall hereafter be made in any incorporated bank, trust company or savings bank transacting business in this state, in the names of two persons, payable to either or payable to either or the survivor, such deposit, or

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any part thereof, or any interest or dividend thereon, may be paid to either of said persons whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made. (L. 1911, Chap. 42.)

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